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ABSTRACT

This report presents findings of a state-wide evaluation of special education in Minnesota with emphasis on costs and the impact of state and federal regulations. Major findings indicated that the percentage of students receiving special education services has risen from 7.4 percent to 10.9 percent over the last two decades; special education expenditures have risen about twice as fast as total education spending since 1988; and students who receive special education services cost about twice as much to educate as other students. The study also concluded that Minnesota's special education regulations are more extensive and specific than required by the federal government and that the state provides special education to a broader array of students than federally required (especially for students with emotional/behavioral disorders). The state is urged to give districts greater administrative freedom, encourage the use of alternatives to special education, and adopt a simpler funding system. Individual sections of the report detail the study's findings and recommendations concerning: (1) students and spending, (2) state and federal requirements, and (3) innovation and change. A response by the Minnesota Department of Children, Families, and Learning concludes the report. (DB)

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January 1997

A Program Evaluation Report

ED 417 497

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Special Education

Report #97-03

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A Program Evaluation Report

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JAMES R. NOBLES, LEGISLATIVE AUDITOR

January 22, 1997

Members
Legislative Audit Commission

In May 1996, the Legislative Audit Commission directed us to evaluate selected aspects of special education in Minnesota, focusing particularly on overall costs, approaches to cost-control, and the impact of state and federal regulations.

Minnesota school districts spent about $693 million on special education services in fiscal year 1995. We found that over the last two decades, the percentage of all students receiving special education services has risen from 7.4 to 10.9 percent. In addition, special education expenditures have risen about twice as fast as total education spending since 1988, and the state now spends about twice as much to educate students who receive special education services than those who do not.

We also found that Minnesota's special education regulations are more extensive and more specific than required by the federal government and that the state provides special education to a broader array of students than federally required. We examined several approaches currently used by school districts to control costs or improve services, and we suggest alternative funding methods that might help to keep costs down while ensuring that students' needs are met.

Our report was researched and written by Marilyn Jackson (project manager), Daniel Jacobson, and Jo Vos, with the assistance of Amy Zimmer and Lilja Dandelake. We received the full cooperation of the Minnesota Department of Children, Families & Learning. We are also grateful for the assistance we received from the state's special education directors and teachers, parents, and school district administrators.

Sincerely,

James Nobles
Legislative Auditor

Roger Brooks
Deputy Legislative Auditor

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Special Education

SUMMARY

Minnesota has a longstanding commitment to public education for all children. The Legislature enacted its special education program in the 1950s, more than 20 years before Congress mandated a free, appropriate public education for every child. There is widespread agreement that, because of these initiatives, policy makers accomplished the major social goal of ensuring that children attend school regardless of disabilities.

Special education policy initially focused on the mechanics of the system, for example, identification of eligible children and the responsibilities of federal, state, and local governments. As the system has evolved, policy makers increasingly have turned their attention to the results, costs, and problems associated with special education. In April 1996, the Legislative Audit Commission directed us to study special education and to focus on the following questions:

- **How much does special education cost? How does the total cost per child for special education compare with regular education?**
- **What accounts for the increased cost and use of special education over time? How has the population of special education students changed?**
- **What does the federal government require of school districts? What additional requirements has the state imposed on school districts?**
- **What more could be done to contain special education costs? How could laws, rules, and practices be changed to encourage greater economy and efficiency?**

To answer these questions, we collected data and interviewed staff from the Department of Children, Families & Learning and the U.S. Department of Education. We reviewed the work of two legislatively mandated special education task forces and visited school districts where we saw special education services delivered first-hand. Our study included a detailed comparison of federal and state laws and rules, correspondence with special education interest groups, research on other states' special education funding methods, and a survey of the state's special education directors. We did not evaluate how well the Department of Children, Families & Learning regulates special education, potential variations in school districts' use of statewide special education criteria, the quality of special education services, nor the outcomes of those services.

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It costs about twice as much to educate students who receive special education services than those who do not.

Overall, we found that Minnesota school districts spent $1.1 billion, or about 21 percent of their total budget, on special education students in fiscal year 1995. This amounted to $12,100 per special education student, or about 2.1 times the cost per regular education student. Between 1988 and 1995, school districts' total expenditures rose 11 percent compared with 22 percent for special education services, after adjusting for inflation and increased student enrollment. The major reason for increased special education spending was a decline in the number of special education students per staff member, particularly aides and support staff.

Although Minnesota provides special education for students besides those that the federal government requires, we found that the state's percentage of special education students is slightly lower than national and regional averages. State laws and rules have recently been revised, partly to relieve local districts' administrative burdens, but state and local policy makers could take additional steps to contain costs and make special education more efficient.

SPECIAL EDUCATION POLICIES

Special education policy in Minnesota is based on federal law, particularly the Individuals with Disabilities Education Act of 1975. The act defines disabilities, establishes identification procedures and service plans, and gives parents and students special legal rights. States establish eligibility criteria, monitor and enforce local compliance with special education laws and rules, and arrange for dispute resolution. In fiscal year 1995, federal categorical aid paid about 6 percent of the cost of designated special education services, state categorical aid 37 percent, special education property tax levies 17 percent, and school districts' general funds about 40 percent.

Federally required individual education plans specify in detail how school districts must individually serve each child who is assessed and found eligible for special education. A case manager and team of educators carry out various parts of the plan, which includes specific goals and objectives. Parents play a major role in developing and revising such plans but have no formal obligation to help with their children's education.

A guiding principle of special education is that students must receive services in the least restrictive environment, that is, alongside their nondisabled peers as much as possible. In this context, education is broadly defined to include nonacademic activities such as lunch, recess, study skills, making friends, and other activities where learning may occur. Academic learning objectives vary depending on the students' individual abilities, regardless of their age or grade in school. Typically, the students advance annually from one grade to the next, but they may remain as high school seniors if necessary until age 22.

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NATIONAL CONTEXT

Policy makers have for the past several years sought better, less expensive ways to provide special education. Last fall, Congress debated the issue but failed to reach agreement needed to reauthorize the Individuals with Disabilities Education Act. Although the basic outline of special education is not expected to change when the act is reauthorized, the U.S. Department of Education has proposed amendments that would put greater emphasis on student performance.[1] Another proposed change, which passed the U.S. House of Representatives in modified form, would be to base federal funds on the total number of children per state, rather than the number of special education students. In addition, federal proposals would encourage school districts to use regular education more effectively and rely less on special education.

STUDENTS

In fiscal year 1996, Minnesota's public schools provided special education to about 101,000 students, or 10.9 percent of Minnesota's total elementary and secondary school enrollees. Each student is categorized with one of 13 primary disabilities, although they may also receive services for other problems. Overall:

- **Just over half of Minnesota's special education students had learning disabilities (38 percent) or emotional/behavioral disorders (17 percent) in fiscal year 1996.**

Minnesota allows special education for more students than federally required but has a lower than average percentage of special education students.

Another 19 percent of the students were in special education primarily because of speech or language impairments. Ten percent had some degree of mental impairment, also called mental retardation, and 9 percent had developmental delays or learning problems in early childhood. The remaining 8 percent of special education students were in seven low-incidence categories of disability: hearing, physical, and visual impairments, autism, traumatic brain injuries, deaf-blindness, and other health impairments.

Although the federal government defines various disabilities, states can expand upon these definitions and adopt criteria to determine which specific children qualify for special education. We found that:

- **Minnesota makes special education available to a broader population than is required by federal law.**

For example, Minnesota allows special education for students who may only have behavior problems. It is impossible to say how many special education students

1 According to the U.S. Department of Education, the educational achievement, postsecondary school attendance, and employment rate of students with disabilities are all less than satisfactory, especially for students with learning disabilities and emotional disorders. See U.S. Department of Education, *Individuals with Disabilities Education Act Amendments of 1995* (Washington, D.C., August 29, 1995).

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have either or both behavioral and emotional problems, but the federal government does not require special education for students who have behavior problems but not "serious emotional disturbances." In addition, Minnesota provides special education to children ages 3 through 5 who have developmental delays, for example in walking, although the federal government requires only that states serve children of this age if they have physical or mental disabilities. Also, Minnesota provides special education for infants and toddlers through age 2 if they have identifiable physical or mental conditions or developmental delays. The federal government does not require any special education for infants and toddlers.

Despite Minnesota's broader spectrum of special education students, our study showed that:

- **In fiscal year 1995, Minnesota's percentage of special education students was slightly lower than other Midwestern states and the nation as a whole.**

We estimated that 10.7 percent of Minnesota's public and private students received special education services in 1995, compared with an average of 11.2 percent for the nation. Because states adopt various eligibility criteria, caution must be taken in state-to-state comparisons. However, we found an overall average rate of 11.2 percent of students in special education in ten Midwestern states. Of these states, five had higher rates than Minnesota, and five had lower rates.

ENROLLMENT TRENDS

The proportion of students receiving special education services grew fastest in the late 1970s after federal requirements took effect.

The number of special education students in Minnesota rose 43 percent, from 70,765 in fiscal year 1977 to 100,931 in 1996. To adjust for enrollment changes over this period, we calculated the percentage of special education students among all school enrollees and found:

- **The percentage of special education students increased from 7.4 percent in fiscal year 1977 to 10.9 percent in 1996.**

More than half of this growth occurred in the late 1970's as the federal Individuals with Disabilities Education Act took effect. Between fiscal years 1977 and 1980, Minnesota's percentage of special education students rose from 7.4 to 9.4 percent. Over the next 16 years, the percentage grew much more slowly, from 9.4 in 1980 to 10.9 percent in 1996.

Our study revealed that 91 percent of the initial growth in the special education population between 1977 and 1980 was due to an increase in the number of students with learning disabilities, which were then just gaining widespread recognition. Between 1980 and 1996, 93 percent of the increased population of special education students was due to increased numbers of students with emotional/behavioral disorders.

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COST PER STUDENT

The cost of educating special education students varies greatly and includes regular education, transportation, and all of the usual costs of public education besides special education services and equipment. Considering all of these costs, we estimated:

- **On the average in fiscal year 1995, Minnesota public schools spent about 2.1 times as much on special education students ($12,100) as on regular education students ($5,800).**

The cost of educating special education students includes disability-related services, some regular instruction, and all the usual costs of public education.

Our method of estimating the cost of special education per student was similar to but more conservative than that used in national research. Studies over the years have shown that schools have spent 1.9 to 2.3 times as much on special education students compared with regular education students.[2]

Of course, average figures mask extremely low- and high-cost cases, and there is great variation from one student to the next although both may have the same type of disability. Unfortunately, existing data did not permit us to estimate the median or range of costs per student nor cost figures for students within the state's 13 disability categories.

A little more than half of the $12,100 per-student estimated cost of special education was for services specifically designated for special education. Another 15 percent of the per-student cost was for the students' instruction through regular education, and about 8 percent was for the students' transportation. Overall, we estimated that:

- **Special education students accounted for about 21 percent of school districts' total expenditures in fiscal year 1995.**

SPENDING TRENDS

In raw numbers, spending designated for special education services rose from $396 million in fiscal year 1988 to $693 million in 1995. During the same time period, the index of state and local government inflation rose by 26 percent, and total school enrollment increased 13 percent. After correcting for inflation and enrollment growth, we found that:

- **Between fiscal years 1988 and 1995, spending designated for special education increased by 22 percent in constant dollars while total education spending increased by 11 percent.**

2 Mary T. Moore, E. William Strang, Myron Schwartz, and Mark Braddock, *Patterns in Special Education Service Delivery and Cost* (Decision Resources Corporation Washington, D.C., 1988), and Stephen Chaikind, Louis C. Danielson, and Marsha L. Braven, "What Do We Know about the Costs of Special Education: A Selected Review," *Journal of Special Education* 26(4) (1993): 344-370.

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Looking at changes over time in the type of special education services that school districts provided between 1988 and 1995, almost half of the increased spending was related to emotional/behavioral disorders. Over the same time period, the population of special education students with emotional/behavior disorders rose by 42 percent. All of the specifically designated low-incidence disability services together accounted for about 16 percent of the spending increase between 1988 and 1995.

REASONS FOR INCREASED SPENDING

Existing, comparable data allowed us to analyze the trend in spending since fiscal year 1988, but only for services specifically designated for special education. We also determined the amount of increase in the cost of these services that was due to changes in the student population, student-staff ratios, staff salaries, and other objects of expenditure. The results showed:

The main reason for increased spending between 1988 and 1995 was fewer special education students per staff member.

- **A declining number of students per staff explained about 66 percent of the growth in spending on designated special education services between fiscal years 1988 and 1995, after adjusting for inflation and enrollment growth.**

Overall, there were 6.6 special education students per staff member in 1988 compared with 5.2 in 1995. The staff increases were mainly for aides and support staff rather than teachers or administrators. Another 11 percent of the increased spending was due to the increased population of special education students. Additional factors included equipment, supplies, and miscellaneous (8 percent), special transportation services (8 percent), and fringe benefits (5 percent). However, our analysis showed that staff salaries had a negligible effect on increased spending for special education services over the 1988-95 time period.

Other hard-to-measure factors may also have affected the trend in special education spending. Among them could be the increased frequency of litigation, the state's deinstitutionalization policy, demographic changes, social change, high technology, medical advances, parents' heightened awareness of special education, and changes in regular education.

SPECIAL EDUCATION SPENDING IN 1995

To estimate the total amount of spending on special education students, we added the amount specifically designated for special education services to the estimated cost of regular education services used by special education students. Results showed:

- **During fiscal year 1995, Minnesota school districts spent approximately $1.13 billion for special education students, including**

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$693 million that was designated for special education services and $432 million for regular education and indirect services.

Nineteen percent of the $693 million was for services to help with learning disabilities, 18 percent for emotional/behavioral disorders, 17 percent for mental impairments, 9 percent for speech/language impairments, and 8 percent for early childhood special education. Hearing, visual, physical, and other health impairments, autism, and traumatic brain injuries collectively accounted for about 8 percent of the $693 million. Another 20 percent of this amount was for special transportation, special education administration, and services used by students with any category of disability.

STATE VERSUS FEDERAL REQUIREMENTS

States are constrained by federal law, but they can set broader eligibility criteria and impose special requirements on school districts.

Generally speaking, the federal government provides the framework for each state's system of special education. Federal requirements involve basic eligibility, legal protections, individual education plans, services that may be needed, and the settings where special education can occur. States follow these requirements as a condition for receiving federal funds. They are free to define unique populations of special education students but must ensure local compliance with laws and rules.

We compared the federal requirements under the Individuals with Disabilities Education Act to the requirements placed on school districts by the state. We found more than 50 ways in which Minnesota laws and rules differ from or are more specific than federal requirements. Of these differences, the most significant was previously mentioned, namely that Minnesota makes special education available to a broader population than is federally required. We found also that:

- **Minnesota imposes more administrative tasks and deadlines on special educators than the federal government.**

For example, state regulations call for at least two instead of one annual meeting to discuss students' individual education plans. Another example is the state requirement for districts to assess all students within 30 school days of parent consent and to produce a written summary of assessment results for all students who are assessed. There is no federal deadline for completing assessments, which must be summarized only for students tested for learning disabilities (38 percent of Minnesota's special education students are classified as learning disabled). In addition, the state, but not the federal government, requires a written summary for some individual students who no longer need special education.

Such requirements may make special education in Minnesota more expensive than necessary, but the opposite could also be true. Through the additional meetings, for example, education plans might be improved, misunderstandings avoided, and compliance with federal rules enhanced. And documentation is critical in the event of litigation, which we found has increased. In general, the special educa-

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tion system is fraught with paperwork and regulation because (1) a written plan is the basis of every student's special education, and (2) parents have due process rights that the state and federal government must ensure.

Minnesota's regulations are more specific and demanding than federally required.

One distinction between state and federal requirements that may or may not help to hold down future increases in special education spending is that Minnesota requires regular teachers to try two different approaches to help students before sending them to be assessed for special education eligibility. Federal regulations do not place such requirements on regular teachers although the U.S. Department of Education has recommended greater reliance on regular education to help students with learning difficulties. It is impossible to say whether this difference between state and federal regulations has any relationship to Minnesota's somewhat low percentage of special education students compared with other Midwestern states.

LOCAL CONCERNS

Special education directors in our survey identified various aspects of special education that, in their opinion, waste school districts' money. One such concern involved the state's criteria for determining students' eligibility for special education. The directors and others have questioned the clarity and precision of the criteria, particularly for emotional/behavioral disorders, learning disabilities, and other health impairments which include attention deficit and hyperactivity disorders. A task force recommended changes to the criteria, but the Legislature has not yet responded.

Another area of the directors' concern was the state's many specific deadlines and administrative requirements to ensure due process for students and parents. For example, Minnesota and not the federal government requires administrative hearings within 30 days of parents' request. Directors also were concerned about administering the state's due process requirements because:

- **Legal disputes between parents of special education students and school districts have increased in the past few years.**

We found 32 formal complaints in fiscal year 1990, or a rate of 39 per 100,000 special education students, compared with 68 complaints in 1995, a rate of 70 per 100,000. There were 7 administrative hearings in 1995 compared with a maximum of 4 per year between 1990 and 1993. In addition, parents and districts can pursue disputes through hearing reviews, conciliation conferences, mediation, and state or federal court.

LOCAL INNOVATIONS

We asked special education directors statewide whether they have adopted any new practices or procedures to help contain special education costs or improve services for parents and students. Most of the special education administrators in

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our survey said that they have recently taken steps to try to contain special education costs or improve services.

School districts have taken many steps to contain costs.

The directors mentioned many specific innovations that fell into a few general strategies. These were to use staff more efficiently, adhere more closely to laws and rules, reexamine local policies and practices, coordinate services with other agencies, and obtain third party reimbursement for providing health-related services. Our study showed that about 20 percent of school districts obtained third party payments in the past few years.

Some of the school districts have made a concerted effort to improve special education through experimental programs. Among school districts now running such programs are Minneapolis, St. Paul, St. Cloud, Elk River, and White Bear Lake. The main focus of the experimental programs is to better serve students who have or are likely to develop learning disabilities or emotional/behavior disorders.

Unfortunately, because of limited participation and the recent implementation of most of these programs, it is impossible to judge overall results. However, the St. Paul district's "prevention" program has been the subject of evaluation since it began in 1990, and results suggest that it has reduced teachers' administrative time, improved students' math and reading skills, and reduced the rate of referrals to special education. In general, the prevention program allows the district to provide specialized instruction to low-performing students without first finding them formally eligible for special education.

STATE FINANCING OF SPECIAL EDUCATION

About two-thirds of all states have recently tried or succeeded in changing the way that they finance special education. Most have tried to contain rising costs by removing fiscal incentives for districts to identify students as disabled or place them in more expensive, restrictive settings.

Minnesota uses a complex funding method that adds to districts' paperwork burden.

States generally use one of four funding approaches, each of which has strengths and weaknesses. These are: flat grants, percent reimbursement, resource based, and pupil weighting systems. The 11 states using the flat grant approach appropriate a fixed amount of special education funding per student based on either total enrollment or special education enrollment. Ten states, including Minnesota, use a percent reimbursement approach where funding is based on a certain percentage of expenditures. Ten other states use a resource based system in which funding is based on resources allocated to special education, such as teachers or classroom units. The remaining states use pupil weights where special education students generate various multiples of the amount allowed for regular students.

The easiest to administer is the flat grant approach, which pegs funding to student enrollment but in practice provides special funding for high-cost cases. When based on total enrollment rather than special education enrollment, the flat grant

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approach also has the advantages of (1) disbursing a predictable level of funding, and (2) neither discouraging nor encouraging districts to place students in special education. In contrast, the percent reimbursement, resource based, and pupil weighting approaches are complex and may create incentives to identify special education students and serve them in more expensive settings.

States also differ in the degree of flexibility they give school districts in spending special education dollars. About half the states, like Minnesota, generally restrict special education funding to programs for students who are formally eligible. The remaining states allow districts some latitude to spend money on students who may not have been formally assessed for special education. For example, school districts in Vermont can spend special education aid on remedial or compensatory instruction for regular education students. Besides recognizing local control, such flexibility can help to reduce paperwork and discourage school districts from unnecessarily placing students in special education.

Overall, our examination of special education funding policies suggested that Minnesota's policies are more restrictive and burdensome than some other states. With minor exceptions, school districts are reimbursed only for services provided to special education students. Also, Minnesota's reimbursement-based funding formula requires its own accounting system and lacks clear incentives to contain long-term spending.

State and local policy makers could do more to contain special education costs and improve services.

CONCLUSION

State policy makers have done much to encourage economy, efficiency, and experimentation in local delivery of special education. The Legislature has commissioned task forces, authorized experimental programs, amended laws, changed the special education funding formula, and required the Department of Children, Families & Learning to give more help to school districts. Most districts have also taken steps to contain costs and make the system run more smoothly. Among other steps that the Legislature could take to help districts contain future costs and improve special education services are to act upon task force recommendations, give districts greater administrative freedom in delivering services and spending money, continue to encourage the use of regular education and other alternatives to special education, and adopt a simpler funding system.

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Introduction

In May 1996, the Legislative Audit Commission directed our office to evaluate selected aspects of special education in Minnesota. According to state law, "Every school district shall provide special instruction and services, either within the district or in another district, for children with a disability who are residents of the district and who are disabled."[1]

Special education policy in Minnesota is grounded in both state and federal law. The federal Individuals with Disabilities Education Act (IDEA) provides funds to participating states to help ensure that all children with disabilities receive a free and appropriate education, as set forth by individual education plans.[2] It mandates that children with disabilities be served in the least restrictive environment, which means that special education students should receive services with nondisabled peers to the extent possible. The act also establishes due process procedures for parents to help ensure that their children get appropriate special education services.

We were asked to look at special education for three main reasons. First, special education represents a significant and growing portion of state spending for education. As such, legislators and other policy makers are interested in ensuring that special education funds are spent wisely. Second, local administrators are faced with many demands on their general education funds, including paying for special education services that are not reimbursed by the state or federal government. This has led to some tension on the local level as different education programs compete for limited resources. Third, legislators in Minnesota and across the nation are concerned about the quality, price, and outcomes of education in general and special education in particular, now that 20 years have passed since the federal government enacted IDEA.

When Congress enacted its first major pieces of legislation dealing with special education, policy makers and advocates focused on establishing categories, procedures, standards, and safeguards to help ensure that children receive a free, appropriate public education regardless of disabilities. The fact was that unknown numbers of children had been kept at home or in institutions. Now that there is widespread agreement that a major objective of IDEA has been accomplished--to publicly educate all children--policy makers' attention has turned to results, costs,

1 *Minn. Stat.* §120.17.

2 P.L. 94-142.

and needed changes.[3] Thus, our evaluation of special education addresses the following questions:

- **How much does special education cost? How does the total cost per child for special education compare with regular education?**
- **What accounts for the increased cost and use of special education over time? How has the population of special education students changed?**
- **What does the federal government require of school districts? How have state policy makers chosen to differ?**
- **What more could be done to contain special education costs? How could laws, rules, and practices be changed to encourage greater economy and efficiency?**

To answer these questions, we collected data and interviewed staff and consultants from the Department of Children, Families & Learning and the U. S. Department of Education. We surveyed the state's special education directors, corresponded with parents and interest groups, consulted with special education experts, and reviewed state and federal laws and rules. In addition, we visited school districts throughout Minnesota to see firsthand how special education services were delivered to students and met with teachers and administrators.

Our study did not evaluate the regulatory activities of the Department of Children, Families & Learning.[4] Neither did we evaluate potential variation in school districts' use of special education criteria as we did in our 1984 report, the quality of special education services that school districts provide, nor the effectiveness of those services.[5] Finally, we did not evaluate the nature or extent of special education services that are sometimes provided outside school settings, for example in court-ordered treatment facilities. The Legislature's 1995 special education task force recommended rule changes to address problems in this area along with eligibility criteria and other items.

Instead we focused on providing decision makers with descriptive information that they can use in making policy decisions about special education. We further focused on matters that are within state and local rather than federal control. Through our study, we identified a number of measures that could make special education more economical and efficient.

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3 According to the U.S. Department of Education, the educational achievement, postsecondary school attendance, and employment rate of students with disabilities are all less than satisfactory, especially among students with learning disabilities and emotional disorders. See U.S. Department of Education proposal, *Individuals with Disabilities Education Act Amendments of 1995* (Washington, D.C., August 29, 1995).

4 The federal government completed an evaluation recently. See U.S. Department of Education, *1994 Review of the Minnesota Department of Education's Implementation of Part B of the Individuals with Disabilities Education Act* (Washington, D.C., December 1994). The report indicates that the department failed to correct two deficiencies that had been identified in 1991. One was to ensure that school districts take corrective actions when needed, and the other was to resolve complaints within 60 days.

5 Office of the Legislative Auditor, *Evaluation of Special Education* (St. Paul, 1984).

This report has three chapters. Chapter 1 summarizes special education in Minnesota, describes special education students and services, estimates the cost of special education per student, and analyzes spending increases over time. Chapter 2 describes the legal requirements that school districts must meet in serving special education students and identifies areas where Minnesota laws and rules differ from those of the federal government. Finally, Chapter 3 recounts changes and innovations that school districts and other states have adopted and suggests additional ways to contain costs and improve special education in Minnesota.

Students and Spending

CHAPTER 1

In 1975, the federal government enacted the Individuals with Disabilities Education Act (IDEA), which provides federal funds to help states provide a free and appropriate public education to students with disabilities. Previously, Minnesota had provided special education to students with disabilities, but the federal law formalized the process of special education and imposed new standards on school districts. Also, the Minnesota Department of Education (now the Minnesota Department of Children, Families & Learning) became responsible for monitoring and enforcing special education standards statewide. Recently, policy makers have become increasingly concerned about the cost of special education.

This chapter provides background information on the history and funding of special education in Minnesota, describes special education students and services, estimates the cost of special education, and examines trends in special education since the federal law took effect in 1977. We asked:

- **How has the population of special education students changed over time? How do special education students compare with other students?**
- **Overall, how much did special education cost in fiscal year 1995? How was the money spent?**
- **What was the cost per student to educate special education students? How does this cost compare with regular education?**
- **How have special education expenditures changed over time, after adjusting for inflation and enrollment growth? What factors account for the changes?**

To answer these questions, we collected data from the Department of Children, Families & Learning, reviewed national studies on the cost and incidence of special education, and interviewed state agency and school district officials. We estimated the most recent year's total spending on special education students and analyzed the trend in spending for special education services between fiscal years 1988 and 1995. We examined trends in Minnesota's special education population over the past 20 years.

Overall, we found that the percentage of students served by special education has grown from 7.4 percent in fiscal year 1977 to 10.9 percent in fiscal year 1996.[1] More than half of this growth occurred during the late 1970s, following the federal government's enactment of the Individuals with Disabilities Education Act. During fiscal year 1995, we estimate that school districts spent about $12,100 per student to educate K-12 special education students, about 2.1 times as much as they spent on regular education students. Between fiscal years 1988 and 1995, spending on special education increased by 22 percent, after adjusting for inflation and enrollment growth. Most of this increase was due to decreased numbers of special education students per staff member and higher spending on services for emotional or behavioral disorders.

A BRIEF HISTORY OF SPECIAL EDUCATION

Minnesota has a longstanding commitment to the education of children with disabilities. As early as 1955, the Legislature created a commission to study the educational needs of handicapped and gifted children and, in 1957, the Legislature adopted a broad new program of special education in the state. However, not all of the eligible children went to school and those that did sometimes did not receive appropriate services.

Special education is broadly defined to include nonacademic activities such as lunch and recess, where learning may occur.

Since the mid-1960s, parents of children with disabilities have strongly asserted themselves through their advocacy groups to define needed services and ensure that children with disabilities have access to those services in education programs. The U.S. Congress, the Legislature, and the federal courts have all played important roles in defining the rights of children with disabilities and the obligations of school districts.

The rights of children with disabilities are grounded in the equal protection clause of the 14th Amendment to the United States Constitution. Two landmark court decisions provided the framework for later legislation that would ensure children with disabilities a broadly-defined free, appropriate public education. During the early 1970s, the federal courts held that schools could not discriminate against children on the basis of disability and that parents had specific due process rights regarding their children's education. Education in this case refers not only to academic instruction, but also social, emotional, and physical development.

By 1973, 45 states, including Minnesota, had adopted some form of legislation that required school districts to educate children with disabilities. However, special education advocates claimed that the majority of such children across the nation were still being denied an appropriate education. According to estimates presented at 1975 congressional hearings, 3.5 million of the nation's 8 million

1 The fiscal year for the state and school districts begins on July 1 and ends the following June 30. Fiscal year 1995 refers to the year ending June 30, 1995.

children with disabilities were being served in inappropriate programs while an additional 1 million were not being served at all.[2] In 1973 and 1975, Congress responded by enacting two pieces of legislation, one concerned with discrimination and the other with education.

In 1973, Congress passed Public Law 93-112, the Rehabilitation Act, that outlaws discrimination in general. Section 504 of the law requires that all recipients of federal funds, including local school districts, end their discrimination against people with disabilities. Although seldom used for many years after it was passed, the law gave parents the right to pursue legal remedies against school districts that discriminated against children with disabilities.[3] In 1990, Congress further expanded the rights of persons with disabilities by passing the Americans with Disabilities Act which outlaws discrimination in employment, public accommodations, transportation, and telecommunications.

Congress addressed the educational needs of children with disabilities in 1975 when it passed Public Law 94-142, the Education for All Handicapped Children Act, since renamed the Individuals with Disabilities Education Act. Frequently referred to and pronounced simply as IDEA, the law provides some federal funding to help states provide children with disabilities a free, appropriate public education. Although states are not required to participate in IDEA, the law is "a comprehensive scheme set up by Congress to aid states in complying with their Constitutional obligations to provide public education for children with disabilities."[4] To date, all states have applied for and receive some federal support for their special education programs.

The federal government sets the basic requirements for special education but funds only about 6 percent of the cost.

Although federal appropriations for IDEA increased from approximately $250 million in its first year to more than $2 billion in 1995, the law has never been fully funded by Congress. Beginning in 1980, the act itself authorizes Congress to appropriate an amount equal to the number of special education students times 40 percent of the average per pupil expenditures for the nation's elementary and secondary public school students. However, in practice, federal appropriations have ranged from only 8 percent of authorized funding during the 1980s to 12 percent during the late 1970s. In fiscal year 1995, federal appropriations for the nation were about 10 percent of authorized funding. The federal government funded about 6 percent of Minnesota's special education services in fiscal year 1995.

When first passed, IDEA required that participating states serve school-age children with disabilities, that is, children 6 through 17 years of age. In 1985, the Minnesota Legislature required that school districts extend their special education services to children ages 3 through 5.[5] Congress followed suit in 1986 and amended IDEA so that all children with disabilities became eligible to receive services from school districts at age 3.

2 20 USC Sec. 1400 (b).

3 Congress included no funding and no monitoring of Section 504 when it was passed.

4 *Smith v. Robinson*, 468 U.S. 992 (1984).

5 *Minn. Laws* (1st Spec. Sess., 1985) Chap. 12, Art. 3, Sec. 2.

In addition, 1986 amendments created the Handicapped Infants and Toddlers Program. Commonly referred to as Part H, the program provides federal grants to participating states to help them serve infants and toddlers from birth through age 2 who have (1) physical or mental conditions that are likely to result in a disability, or (2) developmental delays. These grants are intended to act as an incentive for states to create comprehensive, interagency, family-centered systems of early intervention services. Although some school districts were already serving infants and toddlers in their special education programs, Minnesota elected to formally participate in the federal infant and toddler program and mandate such services statewide in 1987.

SPECIAL EDUCATION INCIDENCE

In December 1995, Minnesota's public school system provided special education services to about 101,000 students ages birth through 21, or 10.9 percent of Minnesota's public and private school students.[6] If we included only special education students who were in kindergarten through twelfth grade, they would be about 10 percent of public and private enrollment. Minnesota recognizes 13 general types of disability that may formally qualify students for special education. For purposes of accounting to the federal government, each special education student is assigned one "primary" disability of the 13 possible types.

Table 1.1 shows the primary disability of special education students, except early childhood special education students, whose primary disability typically is undesignated. Students who receive services for more than one disability are categorized only by their primary disability, as determined by their educators and parents. We found that:

- **Just over half of Minnesota's special education students had learning disabilities (38 percent) or emotional/behavioral disorders (17 percent) in fiscal year 1996.**

Another 19 percent of the students were in special education primarily because of speech or language impairments. Ten percent had some degree of mental impairment, commonly known as mental retardation, and 9 percent were early childhood special education students with undesignated disabilities. Eight percent were in one of Minnesota's seven low incidence categories, which include other health impairments, hearing, physical, and visual impairments, autism, traumatic brain injuries, and deaf-blindness. Of these low-incidence categories, other health impairments was the largest, involving about 4 percent of special education students. It includes attention deficit disorders, hyperactivity, and a variety of other conditions.

Each state is responsible for establishing its own eligibility criteria for the various disabilities, and Minnesota's are summarized in Figure 1.1. The figure also sum-

6 We included private school students in the base because public schools are responsible for providing special education services to public and private school students with disabilities.

Table 1.1: Special Education Incidence in Minnesota by Primary Disability, December 1, 1995

Primary Disability	Special Education Students		Percent of Public and Private Enrollment
	Number	Percent	
Learning disabilities	37,924	37.6%	4.1%
Speech or language impairments	18,727	18.6	2.0
Emotional or behavioral disorders	16,891	16.7	1.8
Mental impairments			
Mild-moderate	7,711	7.6	0.8
Moderate-severe	2,760	2.7	0.3
Early childhood	8,647	8.6	0.9
Other health impairments	3,613	3.6	0.4
Hearing impairments	1,843	1.8	0.2
Physical impairments	1,483	1.5	0.2
Autism	726	0.7	0.1
Visual impairments	422	0.4	0.0
Traumatic Brain injuries	161	0.2	0.0
Deaf-blindness	23	0.0	0.0
Total	100,931	100.0%	10.9%
Total Public and Private Enrollment			928,563

Source: Minnesota Department of Children, Families, & Learning, Unduplicated Child Count Report, December 1, 1995, fall public school enrollment reports, non-public school enrollment reports, and home-school enrollment reports.

Learning disabilities and emotional/ behavior problems primarily affect 55 percent of special education students in Minnesota.

marizes the special education services that are typically provided. However, it is important to note that the designation of any one disability as "primary" may have little practical value as an indicator of the special education services that are delivered to particular students for three main reasons. First, special education students have individual education plans that may call for the combined services of regular teachers, paraprofessionals, specialized teachers, school psychologists, physical therapists, school nurses, school social workers, speech pathologists, and equipment designers, among others. Second, students in the same category may be mildly, moderately, or severely disabled. Third, the choice of a primary disability label depends much on educators' opinions and parents' preferences. Educators vary in their professional approach to disabilities, and some parents prefer one disability label over another for social reasons.

Figure 1.1 further suggests that some disabilities pose more serious, longer-lasting learning problems than others. For example, students may learn very successfully when their main problem is impaired speech, physical limitations, or illness, but not when their general intelligence or ability to respond is severely lacking, as may be the case with severe mental retardation and autism. On the other hand, students with learning disabilities and emotional or behavioral disorders have sufficient intelligence and ability to respond but for various reasons have fallen behind when provided only with regular instruction.

Figure 1.1: Summary Description of Disabilities Prompting Special Education Services in Minnesota

Disability Type	Medical Diagnosis Required?	Basic Criteria	Typical Services
Learning Disability	No	Academic achievement significantly below ability in math, reading, writing, speaking and/or listening due to problems using or gaining information. Not learning at adequate rate, unrelated to family circumstances, quality of previous instruction, or other disability.	Intensive instruction for an average of one hour daily reinforcing regular curriculum plus coping skills to offset potential weaknesses in reading, spelling, arithmetic, organization, and test-taking.
Speech or Language Impairment	No	Speech is inarticulate, abnormal-sounding, and/or non-fluent, such as stuttering, not due to age, family circumstances, or influence of a foreign language. Or student has trouble understanding language and/or serious difficulty expressing needs or ideas, unrelated to age, family circumstances, or influence of a foreign language.	3-5 weekly small group sessions with pathologist for speech problems, mainly in elementary school. For language problems, teach vocabularly and how to make words into ideas, construct sentences, paragraphs, and themes.
Emotional or Behavioral Disorders	No	Physical aggression, impulsiveness, unhappiness, withdrawal, moodiness, and/or unusual behaviors that impede learning and cause poor relationships with peers and teachers. May be due to mental illness but is not related to cultural background, other disabilities, or age.	Reward systems such as points, stickers, and praise when students listen, behave well, avoid angry outbursts, cooperate, and help to solve problems. Sometimes individual or group counseling sessions with school psychologists or social workers, focused on building friendships and coping with frustration.
Mental Impairment	No	Below-average general intelligence causing limited ability to care for self, relate to others, read, use numbers, tell time, and hold a job. Commonly called mental retardation.	Three hours daily focusing on simple reading and math, vocational skills, living skills, social skills, alternative communication systems, and problem solving.
Early Childhood	Sometimes	For children from birth to age 7, any disability defined in this figure, a medical condition known to impede normal development (such as fetal alcohol syndrome, maternal drug use), and/or delayed mental or physical development.	Teacher visits 1-2 hours weekly at home combined with 4-6 visits from various agencies and/or specialists, depending on problems to be addressed. Beginning at age 3, preschool several days weekly. More specific services as child grows.
Other Health Impairment	Yes	Health conditions if they hurt academic performance or increase absenteeism, such as AIDS, asthma, lead poisoning, cancer, diabetes, epilepsy, attention deficit disorder, and hyperactivity.	Medication, structured teaching approach, and orderly settings for those students who have trouble paying attention and/or keeping still. Other conditions may require personal assistants, physical and occupational therapy, special equipment to offset limited strength, vitality, or alertness, spoon feeding, oxygen, and nurses' care at school.

Figure 1.1: Summary Description of Disabilities Prompting Special Education Services in Minnesota (continued)

Disability Type	Medical Diagnosis Required?	Basic Criteria	Typical Services
Hearing Impairment	Yes	Reduced sensitivity to sound that limits use and understanding of spoken words and may cause low achievement in reading and writing, and/or limited social skills, despite use of hearing aids.	Teach alternate communication methods such as sign language and lip reading. Teachers interpret and translate tests, instructions, and study materials to offset limited vocabulary.
Physical Impairment	Yes	Serious physical problems such as paralysis, cerebral palsy, bone disease, and severe burns that slow down or limit mobility, make it hard for students to organize study materials, and interfere with educational performance.	Help with routine tasks and movements necessary to complete class work independently and on time, such as walking, writing, note-taking, and communicating. Modifications to physical features of school such as ramps.
Autism	Yes	Numerous problems usually before age 3, such as unawareness of others, not seeking friends, not playing, not smiling, blankly repeating words, repeated aimless movements, distress over trivial changes such as moving a book, preoccupation with specific objects or parts of objects, e.g., wheels, and insistence on unchanging routes and schedules.	Personal assistant may repeat teacher's words, transport student from room to room, provide alternative activities when classroom cannot be tolerated, encourage communication and social exchanges. Attempts to keep student on task, using food rewards.
Visual Impairment	Yes	Little or no sight, despite corrective lenses, that limits use of printed materials, signs, chalkboards, and computers, requires adaptations in posture or distance, causes visual fatigue, or variations in visual ability due to lighting, color, and contrast.	Large print, close-up seating, audio recordings, Braille instruction, and assistant if needed to navigate, fetch materials, translate tests and work sheets, set up models and adapt experiments.
Traumatic Brain Injury	Yes	Serious head injury that disrupts previous academic achievement and impairs cognitive abilities, such as judgment, concentration, and memory, plus communication, mobility, vision, hearing, social, emotional, and behavioral skills such as self-control, and functional skills such as eating, unrelated to family circumstances or pre-existing disabilities, if any.	Re-education where necessary, using adapted materials, personal assistant and nurse depending on extent of injury and stage of recovery. Speech-language re-training, extra help to learn and remember new things, physical and occupational therapy, counseling to help with adjustment.
Deaf-Blindness	Yes	Both visual and hearing impairments as defined above.	Combined educational techniques for the two conditions.

Source: Office of the Legislative Auditor summary of criteria and reports by Department of Children, Families & Learning.

What do special educators do in response? For the most common disabilities, such as learning disabilities, special education techniques are similar to those used in regular education, but teachers have the time to repeat, reinforce, and adapt lessons to individual learning styles. At the same time, special educators teach students how to study, organize their work, and otherwise try to offset their disabilities. When necessary, special educators also teach students skills needed to conduct social relationships, feed and care for themselves, be physically active, make purchases, obtain help, and hold a job.

State and National Comparisons

We compared the percentage of students served by special education in Minnesota with the national average and with other Midwestern states. Interstate comparisons can be problematic because the accuracy of some of the data is not known, particularly for private school students.[7] We estimate that:

- **In December 1994, Minnesota provided special education services to a slightly lower percentage of students than in the Midwest or the nation as a whole.**

As Table 1.2 shows, about 10.7 percent of Minnesota's public and private students received special education services, compared with 11.2 percent for 10 other Midwestern states and 11.2 percent for the nation. Among Midwestern states, five states had higher rates than Minnesota and five had slightly lower rates. Using different methods, the Minnesota Department of Children, Families & Learning also found that Minnesota's special education programs served a smaller percentage than several other Midwestern states.

Special Education Incidence Trends

Changes in the population of special education students over time were apparent by our examination of enrollment data from fiscal years 1977 through 1996. However, some fluctuations in the trends for specific disabilities may be due to changes in classification practices rather than changes in Minnesota children. The number of special education students in Minnesota grew from 70,765 in fiscal year 1977 to 100,931 in fiscal year 1996, an increase of 43 percent.[8] To adjust for changes in total enrollment, we calculated special education incidence as a percent of public and private enrollment, including home school students. These percentages would be somewhat lower if we excluded special education students who were not yet enrolled in kindergarten. We found:

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7 Private enrollment for fiscal year 1995 was estimated based on sample data for fiscal year 1994. Also, the number of special education students ages birth through 2 was based on data for fiscal year 1994.

8 During fiscal years 1977 through 1995, these figures do not include special education students in state operated facilities, including state hospitals, the Minnesota State Academies for the Deaf and Blind, and state correctional facilities. The state, not local school districts, is mainly responsible for providing special education services to these students. The number of such students has declined from 1,323 in fiscal year 1977 to 375 in fiscal year 1995.

Table 1.2: Special Education Incidence: Minnesota Compared with Other States, December 1, 1994

	Special Education Students	
	Number	Percent of Public and Private Enrollment
Minnesota	96,411	10.7%
United States	5,480,745	11.2
Midwestern States		
Indiana	131,339	12.4
Missouri	118,913	11.9
Iowa	64,997	11.8
Illinois	256,464	11.6
Nebraska	38,778	11.5
Kansas	52,548	10.6
Wisconsin	105,235	10.5
South Dakota	16,041	10.5
Michigan	185,907	10.3
North Dakota	12,371	9.8

Sources: U.S. Department of Education, Office of Special Education Programs, *Special Education Child Count Profile for Minnesota and the Nation*, 1996; U.S. Department of Education, *To Assure the Free Appropriate Public Education of all Children with Disabilities*, 1995; U.S. Department of Education, National Center for Education Statistics, *Digest of Education Statistics*, 1995.

- **Between fiscal years 1977 and 1996, the percentage of special education students increased from 7.4 percent to 10.9 percent.**

Table 1.3 and Figures 1.2 and 1.3 illustrate the trend in special education incidence for Minnesota. As shown:

The greatest increase in Minnesota's population of special education students came before 1980.

- **The percentage of special education students grew rapidly during the late 1970s, following passage of the federal Individuals with Disabilities Education Act. Since 1980, the percentage of special education students has continued to grow, but at a much slower rate.**

More than half of the growth in the percentage of special education students between fiscal years 1977 and 1996 occurred between 1977 and 1980, when the percentage of students served by special education reached 9.4 percent. The main reason for this rapid increase probably was the Individuals with Disabilities Education Act, which took effect in 1977.

Learning disabilities explain most of the enrollment growth in special education during the late 1970s. Between fiscal years 1977 and 1980, the percentage of students with learning disabilities grew from 2.2 to 4.1 percent, accounting for 91 percent of the growth in the percentage of special education students. One reason for this rapid growth was that learning disabilities was just becoming recognized as a disability category by educators during the 1970s.

Table 1.3: Trends in Minnesota's Special Education Incidence (as a Percent of Public and Private Enrollment), 1977-96

Fiscal Year	Public and Private Enrollment (in thousands)	Learning Disabilities	Speech or Language Impairments	Emotional or Behavioral Disorders	Mental Impairments	Early Childhood	Other Health Impairments	Physical Impairments	Hearing Impairments	Visual Impairments	Autism	Deaf-Blindness	Traumatic Brain Injuries	Total
1977	955	2.24%	2.79%	0.45%	1.48%		0.14%	0.10%	0.14%	0.05%				7.41%
1978	927	2.92	2.47	0.39	1.62		0.15	0.13	0.13	0.05				7.86
1979	896	3.67	2.54	0.40	1.60		0.16	0.12	0.14	0.05				8.70
1980	867	4.06	2.68	0.45	1.65		0.19	0.14	0.17	0.05				9.40
1981	846	4.31	2.49	0.52	1.61		0.17	0.14	0.15	0.04				9.45
1982	826	4.27	2.33	0.60	1.68		0.10	0.16	0.15	0.04	0.02%			9.36
1983	808	4.30	2.36	0.72	1.72		0.09	0.17	0.21	0.06	0.02	0.003%		9.66
1984	798	4.47	2.40	0.85	1.68		0.09	0.17	0.22	0.06	0.02	0.004		9.94
1985	795	4.61	2.42	0.96	1.62		0.09	0.18	0.18	0.05	0.02	0.005		10.15
1986	795	4.63	2.37	1.11	1.57		0.11	0.19	0.18	0.05	0.02	0.003		10.22
1987	798	4.63	2.43	1.20	1.59		0.09	0.19	0.17	0.05	0.02	0.003		10.36
1988	809	4.45	2.20	1.26	1.38	0.57%	0.06	0.16	0.16	0.04	0.02	0.003		10.30
1989	812	4.29	2.11	1.32	1.31	0.70	0.05	0.17	0.17	0.05	0.02	0.004		10.18
1990	824	4.01	2.02	1.37	1.26	0.78	0.06	0.16	0.18	0.04	0.02	0.003		9.89
1991	842	3.79	1.87	1.45	1.17	0.81	0.08	0.16	0.17	0.04	0.02	0.002		9.56
1992	858	3.72	1.89	1.51	1.17	0.85	0.10	0.16	0.17	0.04	0.03	0.002		9.63
1993	881	3.72	1.87	1.58	1.13	0.91	0.15	0.15	0.17	0.04	0.04	0.002	0.01	9.76
1994	899	3.80	1.88	1.70	1.10	0.94	0.22	0.15	0.18	0.04	0.05	0.002	0.01	10.07
1995	914	3.99	1.95	1.79	1.11	0.94	0.31	0.16	0.19	0.05	0.06	0.002	0.01	10.57
1996	929	4.08	2.02	1.82	1.13	0.93	0.39	0.16	0.20	0.05	0.08	0.002	0.02	10.87

Note: Percentages of special education students are based on December 1 unduplicated child counts since the 1978-79 school year. For earlier years, we used the average of counts taken on October 1 and February 1.

Source: Minnesota Department of Children, Families & Learning, unduplicated child count reports, fall public school enrollment reports, nonpublic school enrollment reports, and home-school enrollment reports.

Figure 1.2: Special Education Students as a Percentage of Enrollment, 1977-96

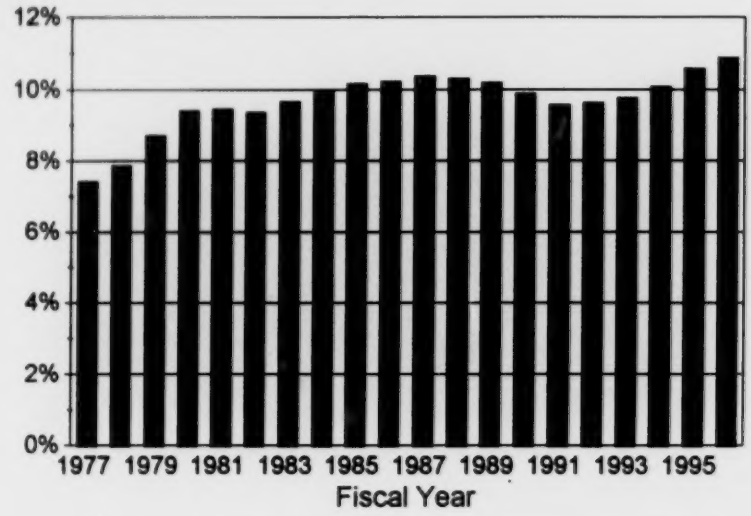
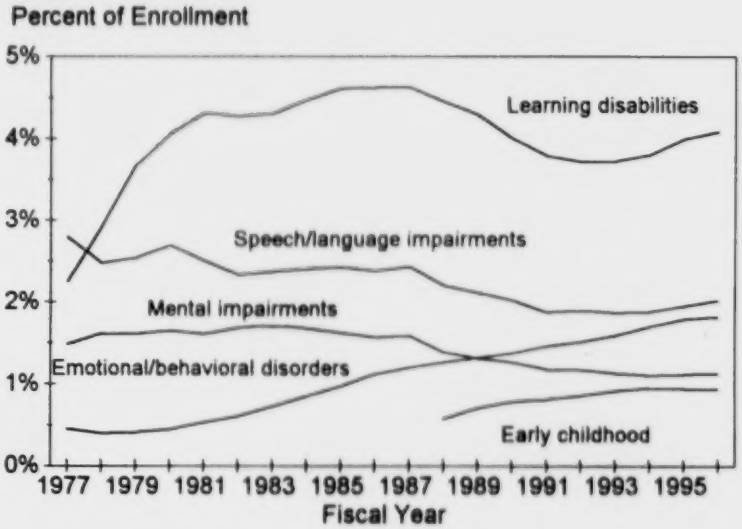


Figure 1.3: Special Education Incidence by Primary Disability, 1977-96



From fiscal years 1980 to 1996, special education incidence grew from 9.4 to 10.9 percent of total enrollment. About 93 percent of this increase was within the emotional/behavioral disorder category, which grew from 0.45 percent in 1980 to 1.82 percent in 1996. In the early 1980s, the federal government cited Minnesota for not serving enough students with emotional or behavioral disorders. Other categories with growing rates were other health impairments, autism, and early childhood special education, which became a category in 1988.

During the same time period that the rate of emotional/behavioral disorders was increasing, the rates of speech/language and mental impairments declined. Between 1980 and 1996, speech/language impairments declined from 2.68 to 2.02 percent and mental impairments went from 1.65 to 1.13 percent. Possible reasons for these declines include reluctance of parents or educators to label children as mentally impaired, classification changes due to the creation of the early childhood category in 1988, and the establishment of statewide eligibility criteria in fiscal year 1992.

The overall percentage of students in special education increased between fiscal years 1980 and 1987, declined until 1991, then increased again through 1996. It grew from 9.4 percent in fiscal year 1980 to 10.4 percent in 1987, less than one fourth the rate of increase during the late 1970s. The growth between 1980 and 1987 was driven by increases in two disability categories -- learning disabilities and emotional/behavioral disorders.

The percentage of students served by special education declined from 10.4 percent in fiscal year 1987 to 9.6 percent in 1991. During this period, most of the decline occurred in three categories -- learning disabilities, speech impairments, and mental impairments.[9]

Minnesota's percentage of special education students has generally increased each year.

One possible reason for the decline is that the state reduced the share of school district special education expenditures it reimbursed during the mid and late 1980s and the early 1990s. As we discuss later, the state first imposed caps on the amount of each individual's salary that could be reimbursed in fiscal year 1986. Between fiscal years 1987 and 1991, the Legislature reduced the reimbursement percentage from 70 percent to 60 percent and reduced the maximum reimbursable salary from $19,500 to $16,727.

Staff of the Minnesota Department of Children, Families & Learning told us that they also attribute the decline between 1987 and 1991 to public concern over the increased number of children identified as learning disabled and schools' anticipation of statewide eligibility criteria. The 1989 Legislature directed the department to develop statewide criteria. The department's proposed criteria were circulated among school districts in 1990, though the department did not formally adopt them until fiscal year 1992, after the actual decline occurred.

9 In part, the decline in these three categories was due to changes in labeling practices when the early childhood category was established in fiscal year 1988. However, since early childhood's incidence in 1991 was less than half of the combined decline of the above three categories, the new category explains less than half of this decline.

Since fiscal year 1991, the total percentage of special education students has increased each year, going from 9.6 percent in fiscal year 1991 to 10.9 percent in 1996, an increase of 1.3 percentage points over five years. While there were increases in most disability categories, most of the increase was due to increased numbers of students with emotional/behavioral disorders, other health impairments, and learning disabilities. During these five years, the percentage of students with emotional or behavioral disorders increased from 1.45 to 1.82 percent.

Other health impairments typically include attention deficit and hyperactivity disorders, which have been medically diagnosed and treated only recently. Also included are medically fragile children, who are sometimes sustained only by sophisticated medical technology. The percentage of students with other health impairments grew from less than 0.1 percent in fiscal year 1991 to 0.4 percent in 1996, making it the fastest growing category, percentage-wise, of the 1990s. The percentage of students with autism also grew rapidly during the 1990s, going from 0.02 percent in 1991 to 0.08 percent in 1996, although the number of children with autism is still small. Meanwhile, the percentage of students with learning disabilities declined to 3.72 percent in fiscal year 1992, its lowest rate since the 1970s, but then increased to 4.08 percent in 1996. However, this rate is less than its peak level of 4.63 percent in fiscal year 1987.

CHARACTERISTICS OF SPECIAL EDUCATION STUDENTS

It is useful for policy makers to know what type of students are served by special education. As part of our study, we asked the Minnesota Department of Children, Families & Learning to provide descriptive information about special education students compared with the remaining population of students who received only regular education services in fiscal year 1995.[10]

Black, Hispanic, and American Indian students are more likely to receive special education services than their Asian or white classmates.

Results are shown in Table 1.4. Overall, nearly 70 percent of the special education students were boys, compared with about half of regular education students, and black, Hispanic, and American Indian students were more likely to receive special education services than their Asian or white classmates. In addition, there were slightly smaller percentages of special education students at the beginning and ending grades of school and slightly larger percentages of special education students in grades 4 through 9. Finally, similar proportions of special and regular education students attended schools in the Twin Cities and outstate Minnesota.

In 1992, the Department of Education found that black and American Indian students were much more likely than white or Asian students to be in special education programs for emotional/behavioral disorders, learning disabilities, and mental

10 Special education students were defined as those who were formally evaluated and received services under an individual education plan at some point during fiscal year 1995. Regular education students were those who did not receive any such services in 1995. The population of regular education students includes 5,725 who were assessed but did not qualify for special education as well as 256 who qualified but did not receive special education services in 1995.

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Table 1.4: Special and Regular Education Student Characteristics, 1995

	Special	Regular
Gender		
Male	68.9%	49.2%
Female	31.1	50.8
Racial or Ethnic Background		
American Indian	3.1	1.7
Asian	2.2	4.0
Hispanic	2.1	1.7
Black	7.3	4.2
White	85.2	88.3
Grade Level		
Pre-K-Grade 3	28.1	31.4
Grades 4-6	28.6	23.2
Grades 7-9	24.5	23.9
Grades 10-12	18.8	21.5
Region		
Twin Cities Area	49.5	49.2
Outstate	50.5	50.8
12th Grade Graduation Rate	62.6	90.2

Source: Department of Children, Families & Learning, Minnesota Automated Reporting Student System.

impairments.[11] Subsequently, because of parents' and advocacy groups' concerns about the overrepresentation of black students in programs for emotional/behavioral disorders, the U.S. Department of Education sampled student records and found no reason to question the approriateness of the students' placement in special education.[12]

We further analyzed data on Minnesota's special education students for fiscal year 1995 and found that boys were consistently overrepresented, particularly among students with autism, emotional or behavioral disorders, learning disabilities, other health impairments, and speech or language impairments. In terms of race or ethnicity, black students in 1995 were more likely than other students to receive services due to learning disabilities, mental impairments, emotional or behavioral disorders, and autism. Larger percentages of American Indian students received special education because of emotional/behavioral disorders, learning disabilities, and deaf-blindness. In contrast, Asian students were generally underrepresented in special education but were more likely than other students to have hearing and visual impairments, including deaf-blindness. In terms of student grade level, stu-

11 Memo to Superintendents from Gene Mammenga, Commissioner of Education, entitled "Representation of Minority Students in Special Education Programs," February 15, 1992, and draft report by Charlotte A. Ryan, *Minority Representation in Special Education in Minnesota School Districts 1989-90* (Department of Education, February 28, 1992).

12 Letter to Commissioner Linda Powell from Thomas Hehir, Director, U.S. Office of Special Education and Rehabilitative Services, undated, and *Office of Special Education Programs Monitoring Report: 1994 Review of the Minnesota Department of Education's Implementation of Part B of the Individuals with Disabilities Education Act* (Washington, D.C., December 1994).

dents with emotional or behavioral disorders were markedly older than other students, and students with speech or language impairments were younger.

We also requested information on special education students' graduation rates but found that currently existing data offer only approximations.[13] Statisticians at the department provided two alternative types of information on graduation rates, but this information must be used cautiously: (1) the number of twelfth-grade special education students who graduated in fiscal year 1995, and (2) the number of students age 14 or older who stopped receiving special education services in 1995 for various reasons including graduation. Overall, the department's data show that about 63 percent of special education students who were in twelfth grade graduated in 1995, compared with 90 percent for regular education students. However, this does not mean that all of the others dropped out or failed to graduate eventually. If they did not graduate as twelfth graders in 1995, they could have continued in the same grade until they graduated in a future year. Thus, the twelfth-grade graduation rate may underestimate the number of special education students who eventually graduate. On the other hand, it may overestimate the percentage of students who graduate because it does not include students who dropped out of school before reaching twelfth grade.

Our analysis of the second type of graduation-related data from the Minnesota Department of Children, Families & Learning shows that about one-third of special education students who stopped receiving services in fiscal year 1995 moved out of the district. Of the remainder, 58 percent graduated, 32 percent dropped out, and 9 percent returned to regular education. Students with emotional or behavioral disorders were most likely to drop out, while students with speech or language impairments were most likely to return to regular education. This does not mean that students who dropped out in 1995 did not return to school in the future and eventually graduate. No data are available to show what happened in future years to students who dropped out of school.

EDUCATIONAL SETTING

Special education students typically spend the majority of their school day in the same classrooms as regular education students.

Special education students are taught in a variety of educational settings, reflecting their diverse educational needs. One of the objectives of special education has been to include special education students in school activities with students who do not have disabilities whenever appropriate. The settings range from regular classrooms, where most of the students are not disabled and are taught by a regular education teacher, to separate facilities where students have little opportunity to be with non-disabled peers. In some regular classrooms, a special education teacher or paraprofessional may assist with the instruction. Often, special education students are removed from the regular classroom for part of the school day and taught one-to-one or in small groups by special education teachers. Examples of separate facilities include day schools for students with emotional or behavioral disorders and the Metro Deaf School.

13 Through the Department of Children, Families & Learning's new data base, it may eventually be possible to determine whether and when individual students graduate.

We examined where students spent most of their school day in December 1994 based on the classifications shown in Figure 1.4. The results, shown in Table 1.5, include only children ages 6 through 21. We found that:

- **During fiscal year 1995, most of Minnesota's special education students received their education primarily in regular classrooms.**

Figure 1.4: Instructional Settings for Special Education Students Ages 6 through 21

Regular Class: Students receive special education services outside the regular classroom for up to 20 percent of the school day.

Resource Room: Students receive special education services outside the regular classroom for between 21 and 60 percent of the school day.

Separate Class: Students receive special education services outside the regular classroom for more than 60 percent of the school day. This does not include students who are placed in separate day schools or residential facilities.

Separate Day School: Students receive education services in a separate day school for more than 50 percent of the school day.

Residential Facilities: Students receive education services in residential facilities for more than 50 percent of the school day.

Homebased/Homebound/Hospital: Students receive education services in homebased, homebound, or hospital programs.

Table 1.5: Educational Setting of Special Education Students Ages 6-21, by Disability, Minnesota, December 1, 1994

Disability Category	Number of Students Ages 6-21	Regular Class	Resource Room	Separate Class	Separate Day School	Residential Facility	Hospital or Home
Learning disabilities	36,370	69.9%	27.1%	2.1%	0.7%	0.2%	0.0%
Emotional or behavioral disorders	16,237	48.7	22.8	10.8	13.0	4.1	0.7
Speech or language impairments	14,029	91.2	7.6	0.8	0.3	0.0	0.1
Mental impairments	9,904	21.4	41.1	28.7	8.0	0.5	0.3
Other health impairments	2,752	69.8	24.1	3.8	1.3	0.3	0.8
Hearing impairments	1,607	60.5	15.7	7.7	6.2	9.8	0.1
Physical impairments	1,335	66.6	25.8	4.9	2.0	0.1	0.6
Autism	493	30.6	22.5	35.3	9.7	1.6	0.2
Visual impairments	364	67.9	14.0	2.5	2.2	13.5	0.0
Traumatic brain injuries	109	45.9	26.6	18.3	6.4	1.8	0.9
Deaf-blindness	19	31.6	15.8	26.3	10.5	15.8	0.0
Total	83,219	63.1%	24.2%	7.2%	4.1%	1.2%	0.2%

Source: Minnesota Department of Children, Families & Learning, Unduplicated Child Count Report, December 1, 1994.

In fiscal year 1995, 63 percent of special education students age 6 through 21 were taught in the regular classroom setting, meaning they received special education services outside the regular classroom for less than 21 percent of the school day. Consequently, this includes students who received special education services outside the regular classroom for small periods of time as well as students who received special education services in the regular classroom. Table 1.5 shows that special education students were also taught in resource room settings (24.2 percent), separate classes (7.2 percent), separate day schools (4.1 percent), residential facilities (1.2 percent), and hospital or homebound settings (0.2 percent).

Students with the two most common disabilities (speech/language and learning disabilities) were more likely than other special education students to be taught in the regular classroom setting. As shown by the table, 91 percent of students with speech or language impairments and 70 percent of students with learning disabilities were taught in the regular classroom for at least 80 percent of the school day. Most students with visual, hearing, physical, or other health impairments were also taught in the regular classroom setting.

Overall, 4,642 special education students ages 6 through 21 were taught in facilities apart from school buildings attended by regular education students, including separate day schools, residential facilities, hospitals, and homes. These facilities are the least inclusive educational environments. We found:

Students with mental impairments and emotional/ behavioral disorders are more likely to be taught in separate facilities than other special education students.

- **Most of the school-age special education students that were taught in separate facilities were students with emotional or behavioral disorders or mental impairments.**

About 62 percent of the students ages 6 through 21 who were taught in separate facilities were students with emotional or behavioral disorders. Another 19 percent had mental impairments as their primary disability.

We compared the educational settings of special education students in Minnesota with the nation based on the most recent data available. As Table 1.6 shows:

- **Compared with the national average in December 1993, Minnesota had a higher percentage of school-age special education students in regular classrooms but also a higher percentage in separate facilities.**

Table 1.6: Educational Settings of Special Education Students Ages 6-21, Minnesota Compared With the Nation, 1993-94 School Year

	Minnesota	Nation
Regular class	61.0%	43.4%
Resource room	25.7	29.4
Separate class	7.7	22.7
Separate day school	3.8	3.1
Residential facility	1.5	0.7
Homebound, hospital	0.3	0.6

Source: U.S. Department of Education, *Seventeenth Annual Report to Congress on the Implementation of the Individuals with Disabilities Education Act* (Washington, D.C., 1995).

In December 1993, Minnesota schools taught about 61 percent of special education students ages 6 through 21 in the regular classroom, compared with 43 percent nationally. Also, about 5.6 percent of Minnesota's special education students were taught in separate facilities, including separate day schools, residential facilities, hospitals, and homes, compared with 4.5 percent in the nation.

SPECIAL EDUCATION SPENDING: FISCAL YEAR 1995

One reason for our study was the public concern over special education spending and its relationship to regular education spending. To the extent that the cost of educating special education students exceeds the average cost of educating regular education students, school districts must obtain additional revenue from state or federal aid, local property taxes, or district general funds. In this section, we first estimate how much Minnesota's school districts spent on special education services. Then, we estimate the total cost of educating special education students and compare the total cost per student with the cost of educating other students. The total cost of educating special education students includes the cost of providing regular education services to these students as well as the cost of special education services.

Spending on Special Education Services

More than half of special education expenditures are for services related to learning disabilities, emotional/ behavioral disorders, and mental impairments.

We estimate that in fiscal year 1995, Minnesota school districts spent about $693 million on special education services, which was about 62 percent of the total spent on special education students. These services include personnel expenses for special education staff, equipment and supplies, and special transportation services. They do not include the regular education services received by special education students such as instruction by regular classroom teachers nor indirect costs for categories such as physical plant, general administration, and support services. As shown in Table 1.7, personnel salaries and fringe benefits constituted about 88 percent of spending on special education services in fiscal year 1995.

Table 1.8 summarizes special education expenditures for fiscal year 1995 by type of service.[14] The types of services are for 13 disability categories, special transportation, and general services such as those provided by special education administrators, school social workers, and school psychologists who work with students with a variety of disabilities.

As shown, about 54 percent of special education spending went for services related to learning disabilities (19 percent), emotional/behavioral disorders (18 per-

14 Special education students commonly receive services for more than one type of disability. For example, speech services are often provided to students with a variety of other disabilities such as physical disabilities, learning disabilities, and others. In such cases, expenditures are categorized according to the type of service provided rather than the type of the student's primary disability. As a result, these expenditure data cannot be used to calculate an average cost per student for each disability group.

Table 1.7: Estimated Special Education Expenditures by Object of Expenditure, Fiscal Year 1995

	Amount (in thousands)	Percent
Salaries		
Teachers	$298,802	43.1%
Aides	89,969	13.0
Directors, supervisors	7,845	1.1
Other staff		
School social worker	23,215	3.4
School psychologist	19,265	2.8
Adaptive physical education specialist	10,885	1.6
Consultant	10,002	1.3
Occupational therapist	9,344	1.3
Physical therapist	4,636	0.7
Secretary	4,040	0.6
Nurse	3,667	0.5
Interpreter for the deaf	3,552	0.5
Certified occupational therapy assistant	1,415	0.2
Audiologist	1,337	0.2
Other	13,715	2.0
Salaries subtotal	501,689	72.4
Fringe benefits[1]	105,150	15.2
Special transportation	53,079	7.7
Other (equipment, supplies, tuition agreements)	32,944	4.8
Total	$692,862	100.0%

Source: Minnesota Department of Children, Families & Learning, Electronic Data Reporting System for Special Education, and Uniform Financial Accounting and Reporting System.

[1]About 10 percent of fringe benefits are reported under the salaries category.

cent), or mental impairments (17 percent). Low-incidence disability services (services for hearing, visual, physical, and other health impairments, autism, and traumatic brain injuries) collectively accounted for about 8 percent of special education spending. Another 20 percent of the spending was for special transportation services, special education administration, and other services that were provided to special education students in general.

Cost of Special Education Compared with Regular Education

To compare the cost of special education versus regular education, it is necessary to estimate the total cost of education per student. Spending for special education services is only part of the total cost for educating special education students. To that must be added the cost of providing regular education services to special education students as well as indirect costs such as physical plant and general administration.

To estimate the cost of providing regular education services and indirect services to special education students, we used similar but slightly more conservative as-

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Table 1.8: Estimated Special Education Expenditures by Type of Service, Fiscal Year 1995

Service	Expenditures	Percent
Specific learning disabilities	$133,005,954	19.2%
Emotional or behavioral disorders	125,280,165	18.1
Mental impairments	122,079,393	17.6
Speech or language impairments	59,020,775	8.5
Early childhood	51,704,596	7.5
Physical impairments	28,004,216	4.0
Hearing impairments	18,927,363	2.7
Visual impairments	5,575,521	0.8
Autism	4,314,601	0.6
Other health impairments	2,893,539	0.4
Traumatic brain injuries	161,995	0.0
General unallocable[1]	88,815,722	12.8
Special transportation	53,078,836	7.7
Total special education services	$692,862,676	100.0%

Source: Minnesota Department of Children, Families & Learning, Electronic Data Reporting System for Special Education, and Uniform Financial Accounting and Reporting System.

[1]General unallocable services are special education services that are not allocated by type of disability. They include payroll for school social workers, school psychologists, administrative staff, and various other staff.

The total cost to educate special education students includes the cost of special education services and regular education services.

sumptions than in the most recent comprehensive national study of special education costs.[15] This resulted in an estimate that is somewhat lower, but we preferred this to a potential overestimate and lacked the resources and data to be more precise. Our assumptions are as follows (See Figure 1.5 for definition of expense categories.):

1. The cost of regular education instruction for special education students is proportional to the time spent in the regular classroom. For example, if a student spent half of the school day in regular classes, we assumed that the regular education instructional cost attributable to that student was one half of the average instructional cost for regular education students.[16]

15 Mary T. Moore, E. William Strang, Myron Schwartz, and Mark Braddock, *Patterns in Special Education Service Delivery and Cost* (Decision Resources Corporation: Washington, D.C., 1988).

16 We estimated the amount of time special education students spent in regular classrooms based on the range of time that students spent in the regular classroom as specified by federal definitions for each setting, as shown in Figure 1.4. We used the midpoint of the range for the regular classroom, resource room, and separate class settings. For example, as Figure 1.4 indicates, special education students placed in separate classes spend between 60 and 100 percent of their school day in separate classes. Thus, we assumed that students in separate classes spent an average of 80 percent of their day in separate classes and 20 percent of their school day in the regular classrooms, incurring 20 percent of the average cost of regular education instruction during that time. The national study assumed that instructional costs were proportional to time spent in the regular classroom except for special education students who were taught primarily in the regular classroom, for whom the national study assumed that the regular education instructional cost was the same as the cost for the average regular education student.

Figure 1.5: Education Expense Categories

Regular and vocational education instruction: teachers, instructional aides, supplies, and equipment for any regular or vocational class or extra-curricular activity.

Physical plant, debt service: maintenance, repair, and debt service for physical plant, facilities, and grounds of the school district.

Transportation: operating expenses for transporting students to and from school and between schools.

Instructional and pupil support: staff development, libraries, counseling, health, social work, and food services.

Administration: school board, superintendent, assistant superintendents, principals, directors of instructional areas, and their support staff.

District support services: finance services, human resources, data processing, legal services, community relations, printing, and research.

Exceptional education other than special education: Assurance of Mastery programs, limited English proficiency programs, gifted and talented programs, and other programs for students who are educationally disadvantaged (such as Title I).

Source: Minnesota Department of Children, Families & Learning, Uniform Financial and Accounting Reporting System.

2. The cost of general administration and district support services is similar for all students.

3. The school districts' cost of instructional and pupil support, physical plant, and debt service is allocated equally among all students who attend public schools.

4. School districts do not incur significant regular education instructional costs for educating special education students who are homebound, in hospitals, or who attend separate day schools or residential facilities.

5. Spending for exceptional education instruction (other than special education) attributable to special education students is in proportion to special education students' share of students served by Title I, limited English proficiency, and gifted and talented programs.

Table 1.9 summarizes the results.[17] Overall:

- **We estimate that in fiscal year 1995, on average, Minnesota schools spent about 2.1 times as much per K-12 special education student ($12,100) as for regular education students ($5,800).**

17 To estimate how much school districts spent on special education services in fiscal year 1995, we mainly used the department's Electronic Data Reporting System for Special Education. Expenditure data in this data base are carefully maintained and reported to the federal and state governments in order to receive reimbursement. The data base includes special education expenditures for staff salaries, contracted services, equipment, and supplies, but not all expenditures for fringe benefits nor substitute teachers because these expenditures are not reimbursed under the state's special education funding formula. In these instances, we used Minnesota's Uniform Financial Accounting and Reporting System (UFARS). We estimated school district spending on transportation services for special education from another data base within the department, namely disabled student transportation services. Because department staff estimated that special education students account for at least 95 percent of these expenses, we used 95 percent of these expenses in our estimate.

Table 1.9: Estimated Cost per Student of K-12 Special Education Compared with Regular Education, Minnesota, Fiscal Year 1995

	Special Education		Regular Education	
Expense Category	Amount	Percent	Amount	Percent
Special education services	$6,731	55%	$0	0%
Regular and vocational education instruction	1,981	16	2,725	47
Physical plant, equipment, debt service, other	1,272	10	1,303	23
Transportation	734	6	256	4
Instructional and pupil support	709	6	726	13
Administration	334	3	334	6
Support services	258	2	258	4
Exceptional education (other than special education)	113	1	174	3
Total	$12,132	100%	$5,776	100%

Source: Office of the Legislative Auditor analysis of data provided by the Department of Children, Families & Learning.

In other words, on average, schools spent about $6,300 more per special education student than for regular education students. Of course, this average figure masks extremely low and high cost individual cases. The extra cost may vary from less than a thousand dollars per year for a student who needs only some equipment or occasional assistance to tens of thousands of dollars for students with severe disabilities who require constant individual attention and expensive equipment.

It costs about twice as much to educate students who receive special education services as for those who do not.

Our estimate that K-12 special education students cost about 2.1 times as much to educate as regular education students is similar to findings of national studies. The most recent comprehensive national study estimated that in the 1985-86 school year, schools nationwide spent, on average, 2.3 times as much on special education students as on regular students.[18] Other national studies indicate that the cost of educating special education students during the 1960s and 1970s was about 1.9 to 2.2 times the cost of educating regular education students.[19]

We estimate that in fiscal year 1995, Minnesota school districts also spent about $50 million on special education services for students who were not yet enrolled in kindergarten. Altogether, we estimate that:

- **In fiscal year 1995, Minnesota school districts spent a total of about $1.13 billion on special education students, including about $693 million on special education services and about $432 million on**

18 Mary T. Moore, E. William Strang, Myron Schwartz, and Mark Braddock, *Patterns in Special Education Service Delivery and Cost.*

19 Stephen Chaikind, Louis C. Danielson, and Marsha L. Braven, "What Do We Know About the Costs of Special Education: A Selected Review," *Journal of Special Education*, 26(4), 1993, 344-370.

regular education and indirect services for special education students.[20]

In addition,

- **We estimate that in fiscal year 1995, about 21 percent of school districts' total expenditures were for special education students.**

Expenditures for special education services have been commonly reported as being about 12 percent of total education expenditures.[21] Since special education students make up between 10 and 11 percent of the student body, these figures have suggested to some that special education costs are roughly proportional to regular education costs. This is not correct because the 12 percent cost figure does not include the cost of educating special education students in regular education classes nor the students' share of general administrative and physical plant expenditures.

SPECIAL EDUCATION EXPENDITURE TRENDS

We examined spending trends for special education services by Minnesota school districts between fiscal years 1988 through 1995.[22] We did not examine trends for total spending on special education students because spending data on regular education services for special education students were not available prior to fiscal year 1995.

Table 1.10 presents the spending trends by type of service, after adjusting for inflation and growth in total public and private enrollment. Overall, we found:

- **Between fiscal years 1988 and 1995, Minnesota school districts' total expenditures rose by 11 percent, compared with 22 percent for spending on special education services, after adjusting for inflation and enrollment growth.**

In unadjusted numbers, school districts spent $396 million for special education services in fiscal year 1988, compared with $693 million in fiscal year 1995, an in-

20 To analyze the financial impact of special education on school districts, we also estimated the "extra" or marginal cost of special education, that is, the difference between the total cost of educating special education students and the cost of educating the same number of regular education students. The results showed that the extra cost attributable to special education was about $620 million in fiscal year 1995. This figure is less than the $693 million spent on special education services because it recognizes that special education students receive less regular education services than regular education students.

21 For example, a recent newsletter from the Minnesota Department of Children, Families & Learning, *Special Edits*, late summer, 1995.

22 We obtained special education expense data from the Electronic Data Reporting System for Special Education of the Minnesota Department of Children, Families & Learning and estimated fringe benefit expenditures by using the department's UFARS system. Comparable detailed spending data were not available for years prior to 1988.

Table 1.10: Trend in Special Education Expenditures by Type of Service, in Inflation-Adjusted Dollars per Student Enrolled in Public or Private School, Fiscal Years 1988-95

	Fiscal Year								Percent Change
	1988	1989	1990	1991	1992	1993	1994	1995	1988 to 1995
Learning disabilities	$155	$155	$152	$148	$149	$146	$142	$146	-6%
Emotional or behavioral disorders	71	79	86	93	104	114	126	137	94
Mental impairments	125	127	129	128	131	130	131	134	7
Speech or language impairments	55	59	60	61	63	63	64	65	16
Early childhood	39	45	47	50	54	56	56	57	45
Physical impairments	20	22	25	27	29	31	30	31	54
Hearing impairments	16	16	17	18	19	20	21	21	30
Visual impairments	5	5	5	5	5	6	6	6	31
Autism	2	2	3	3	3	4	4	5	107
Other health impairments	1	1	1	1	2	2	3	3	442
Traumatic brain injuries						< 1	< 1	< 1	–
General unallocable[1]	84	77	80	83	86	88	92	97	15
Special transportation	46	49	52	54	55	55	54	58	26
Total special education services	$619	$637	$657	$671	$699	$714	$730	$758	22%
Student enrollment	808,820	812,015	823,527	842,054	858,146	880,587	899,417	913,733	

Note: We adjusted figures for inflation based on the U.S. Gross Domestic Price deflator for state and local governments.

Source: Minnesota Department of Children, Families & Learning, Electronic Data Reporting System for Special Education, and Uniform Financial Accounting and Reporting System.

[1]General unallocable services include special education services that were not allocated by type of disability, such as expenditures for school social workers, school psychologists, administrative staff, and various other staff.

crease of 75 percent. During the same time period, the inflation rate for state and local governments increased by 26 percent and total public and private enrollment grew by 13 percent. Thus, after adjusting for inflation and enrollment, special education spending grew by 22 percent. This was twice as fast as the comparable 11 percent growth in total education spending.

We analyzed what types of special education services accounted for the increase in spending. Since transportation and other special education services that were not allocated to specific disabilities accounted for about 18 percent of the spending increase, the data tend to understate how much of the increase is explained by services for each specific disability. As Table 1.11 shows:

- **Services for emotional or behavioral disabilities explain about half of the increase in spending on special education services between fiscal years 1988 and 1995.**

Spending on emotional or behavioral disorder services increased by 94 percent between fiscal years 1988 and 1995. This growth explains 46 percent of the total spending growth for special education services over that time period. The rapid

Table 1.11: Estimated Share of Growth in Special Education Spending by Type of Service After Adjusting for Inflation and Total Enrollment, Fiscal Years 1988-95

Type of Service	Share of Growth
Emotional or behavioral disorders	48%
Early childhood	13
Special transportation	9
General unallocable[1]	9
Physical impairments	8
Speech or language impairments	7
Mental impairments	6
Hearing impairments	3
Other health impairments	2
Autism	2
Visual impairments	1
Traumatic brain injuries	0
Learning disabilities	-7
Total	100%

Source: Minnesota Department of Children, Families & Learning, Electronic Data Reporting System for Special Education, and Uniform Financial Accounting and Reporting System.

[1]General unallocable services include special education services that were not allocated by type of disability. They include payroll for school social workers, school psychologists, administrative staff, and various other staff.

growth in spending on emotional or behavioral disorder services was due to an increase in the percentage of students with this disability as well as higher spending per student with an emotional or behavioral disorder. Between 1988 and 1995, the percentage of students with the primary disability of emotional or behavioral disorder increased by 42 percent.

The service category with the next largest effect on spending growth was early childhood services, which accounted for 13 percent of the spending increase. One reason for the growth in spending on early childhood services was that early childhood programs expanded following the state mandate to provide education services to children ages 3 through 5 beginning in 1985 and the state mandate to serve infants and toddlers from birth to age 2 beginning in 1987.

Expensive cases involving students with low-incidence disabilities such as serious physical impairments, traumatic brain injuries, and autism tend to attract much attention and raise concerns that they are an important factor in rising expenses. We found that:

- **Together, services for the low-incidence disabilities accounted for about 16 percent of the increase in spending for special education services between fiscal years 1988 and 1995.**

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Services for physical disabilities explained 8 percent of the growth in spending, and the other low-incidence categories each accounted for less than 3 percent.

Expenses for learning disability services declined by 6 percent over this period after adjusting for inflation and enrollment growth. This was the only type of disability service that had a negative effect on spending growth between fiscal years 1988 and 1995.

We also estimated how much of the overall spending increase was due to changes in the percentage of special education students, student-staff ratios, staff salaries, and other objects of expenditure.[23] As Table 1.12 shows:

- **Spending for special education services by Minnesota school districts grew faster than inflation and enrollment between fiscal years 1988 and 1995 primarily because of declining student/staff ratios.**

The number of special education students per staff member dropped from 6.6 in 1988 to 5.2 in 1995.

We estimate that decreases in special education student/staff ratios explain about 66 percent of the growth in special education spending, after adjusting for inflation and overall enrollment growth. The data show that the reduction in student/staff ratios was primarily due to increased numbers of aides and support staff such as social workers, physical and occupational therapists, interpreters, and consultants.

Table 1.12: Sources of Growth in Special Education Spending, After Adjusting for Inflation and Total Enrollment, Fiscal Years 1988-95

Source	Percent of Growth Explained
Special education student/staff ratios	
Aides	31%
Support staff	30
Teachers	11
Administrators, supervisors	- 6
Percentage of students in special education	11
Equipment, supplies, contracted services, other	8
Special transportation services	8
Fringe benefits	5
Salaries	0

Source: Our estimates are based on data from the Minnesota Department of Children, Families & Learning, Electronic Data Reporting System for Special Education and UFARS.

23 To do this, we estimated how much spending would have increased if each of the factors in Table 1.12 changed as it did and each of the other factors remained constant. The effect of these factors on spending will vary depending on the time period chosen. For example, the percentage of students receiving special education services grew only moderately during this time period as it declined during the first three years and increased during the last four years. Overall, it increased from 10.3 to 10.57 percent, just a 3 percent increase. During periods of rapid growth, the effect of growing incidence would likely be much greater.

As shown in Table 1.13, the number of special education students per paraprofessional dropped from 24 in fiscal year 1988 to 14 in fiscal year 1995, a 43 percent reduction. Also, the ratio of students to support staff declined by 28 percent. Department staff told us they attribute the growth in special education staff to (1) increased placement of special education students in regular classes, requiring staff, particularly paraprofessionals, to be less efficiently spread out over many classes, and (2) greater use of related service personnel such as school social workers, physical and occupational therapists, school counselors, and consultants. Special education services provided by school counselors became eligible for state reimbursement in 1993.

Table 1.13: Trends in Student/Staff Ratios, Fiscal Years 1988-95

	Fiscal Year								Percent Change
	1988	1989	1990	1991	1992	1993	1994	1995	1988-1995
Special Education Student/ Staff Ratios									
Teachers	12.0	11.6	11.3	11.1	11.0	11.1	11.4	11.6	-4.0%
Aides	24.2	22.7	20.7	18.4	16.6	15.2	14.7	13.9	-42.6
Directors, supervisors	345.7	348.7	348.1	327.3	370.6	403.4	660.9	647.9	87.4
Support staff	43.1	39.4	36.0	33.2	31.7	30.7	31.9	30.9	-28.3
All special education staff	6.6	6.3	6.0	5.6	5.4	5.2	5.3	5.2	-21.8
All Student/Regular Education Staff Ratios									
Teachers	20.5	20.4	20.6	20.7	20.6	20.9	20.8	20.7	1.1
Administrators	244.2	240.1	245.4	257.3	261.8	269.9	278.6	286.8	17.4
Other licensed staff (includes licensed special education support staff)	246.6	227.7	223.1	214.2	209.8	210.0	209.2	177.7	-27.9
All Student/All Staff Ratios									
Teachers (regular and special education)	17.1	17.0	17.1	17.3	17.2	17.4	17.3	17.1	-0.1
All licensed staff	15.0	14.8	14.9	15.0	14.9	15.1	15.1	14.9	-0.6

Sources: Minnesota Department of Children, Families & Learning, Electronic Data Reporting System for Special Education, unduplicated child count reports, student/staff reports, and fall enrollment reports.

Between fiscal years 1988 and 1995, special education student/teacher ratios have declined slightly while special education student/administrator ratios increased substantially. One reason that the number of special education administrators declined is that in 1993 the Legislature restricted state salary reimbursement for special education to teachers and related and support services staff providing direct service to students.[24]

The increased percentage of special education students explained about 11 percent of the growth in spending between fiscal years 1988 and 1995. Other factors that contributed to the growth in spending were increases in equipment, supplies, and miscellaneous expenses (8 percent), special transportation services (8 percent), and fringe benefits (5 percent).

24 *Minn. Laws* (1993), Chap. 224, Art. 3, Sec 15.

We also found that, overall, salary increases had a negligible effect on increased special education spending between fiscal years 1988 and 1995. During this time period, average special education teacher salaries increased by about 1 percent, after adjusting for inflation. Also, the average salary of special education aides increased by 3 percent and average related service staff salaries declined by about 10 percent. However, staff salaries may have had more significant effects during other time periods. For example, average salaries of special education teachers increased less than inflation between 1975 and 1980, but increased by 27 percent between 1980 and 1988, after adjusting for inflation.

Spending trends are affected by a variety of factors that are difficult to quantify. One factor is the shift away from centralized care in state facilities to care by families, schools, and home. The state funds most special education services for students who are in state-operated facilities, which include state hospitals, the Minnesota State Residential Academies in Faribault, and state correctional facilities. Between fiscal years 1977 and 1995, the number of special education students in state-operated facilities declined from 1,323 to 375. As students moved from state facilities to community facilities or home, school districts assumed responsibility for their education. While there are no statewide data on how much this affected school district spending, undoubtedly there was a substantial increase. However, most of the change occurred between fiscal years 1979 and 1987, when the number of special education students in state-operated facilities went from 1,323 to 449. During the 1988-95 period we analyzed above, the number declined from 448 to 375.

Hard-to-measure factors may also help to explain recent increases in special education spending.

Another factor that is difficult to quantify is how the threat of litigation affects school district spending on special education services. School district officials told us that sometimes they provided services that they considered unnecessary in order to avoid costly legal expenses.

Other factors that may influence special education costs are demographic changes, social change, new technology, medical advances, parents' heightened awareness of special education, and changes in regular education. The effects of all of these factors are difficult to measure.

SPECIAL EDUCATION FUNDING

School districts use a variety of federal, state, and local revenues to finance special education. We examined the contributions of federal, state, and local funding in Minnesota and how they have changed over time. We also briefly discuss the implications of recent changes in special education funding made by the Legislature in 1995.

Funding in Fiscal Year 1995

As shown above, we estimate that school districts spent $693 million on special education services in fiscal year 1995. As Table 1.14 shows:

Table 1.14: Funding Sources for Special Education, Fiscal Year 1995

	Amount (in millions)	Percent
Federal categorical aid	$43	6%
State categorial aid	259	37
Special education property tax levies[1]	114	17
School districts' general funds	277	40
Total	$693	100%

Source: Office of the Legislative Auditor analysis of data from the Minnesota Department of Children, Families & Learning.

[1]Includes property tax levies authorized by the state for special education personnel and transportation expenses.

- **We estimate that federal categorical aid funded 6 percent of school district expenditures for special education services in fiscal year 1995, state categorical aid 37 percent, special education property tax levies 17 percent, and school districts' general funds 40 percent.**

The federal government provides categorical aid for special education based on the number of children receiving special education services under the Individuals with Disabilities Education Act. In fiscal year 1995, federal aid for Minnesota was about $43 million.[25]

The state provided about $259 million to Minnesota school districts in categorical aid for special education in fiscal year 1995. Most of this state aid was reimbursement for a percentage of districts' eligible special education expenses, including special education staff salaries, equipment and supplies, contracted services, and transportation expenses. In addition, Minnesota school districts with significantly high or extraordinary special education costs or low property wealth may qualify for other forms of aid. In fiscal year 1995, the state provided about $18 million in equalization aid to help districts with special education property tax levies that were high in relation to property wealth. It also paid about $5.9 million in excess cost aid to districts with high unreimbursed special education expenses in relation to their general revenue.[26]

School districts also fund special education services through special education property tax levies authorized by the state and through school district general fund revenue. In recent years, almost all school districts chose to levy the full amount

25 Individual grants received by school districts from the federal government for special projects are not included in these figures.

26 *The excess cost aid* program pays school districts 70 percent of the difference between the district's unreimbursed special education expenditures and 5.7 percent of the district's general revenue. The state also provides *special pupil aid,* which reimburses districts for extra costs that they incur for special education students who live in residential facilities but have no home school district because, for example, parental rights have been terminated or parents cannot be located. In addition, the state provides *home based travel aid, which* reimburses districts for 50 percent of the travel costs of staff providing home-based special education services to children under five years old.

authorized by the state. The local levies authorized by the state for special education were about $114 million in fiscal year 1995, or 17 percent of spending on special education services. District general fund revenues paid about 40 percent.[27]

Funding Trends

We examined trends in special education funding between fiscal years 1988 and 1995 and found that:

- **Between fiscal years 1988 and 1995, state categorical aid for special education remained almost the same, after adjusting for inflation and enrollment growth, while revenue from school districts' general funds increased by 22 percent.**

State categorical aid for special education nominally increased from $181 million in fiscal year 1988 to $259 million in fiscal year 1995. But, as Table 1.15 indicates, after adjusting for inflation and overall enrollment growth, state special education funding increased by 1 percent between 1988 and 1995. During the same time period, federal funding increased by 28 percent, after adjusting for inflation and enrollment growth. Since state aid is much larger than federal aid, federal and state aid combined increased by just 4 percent. In contrast, special education spending financed by special education property taxes increased by 134 percent and funding by districts' general funds increased by 22 percent.

Table 1.15: Trends in Funding of Special Education, Fiscal Years 1988-95

	Inflation-Adjusted Funding per Student Enrolled in Public or Private School								Percent Change
Fiscal Year	1988	1989	1990	1991	1992	1993	1994	1995	1988-95
Expenditures for Special Education Services	$619	$637	$657	$671	$699	$714	$730	$758	22%
State categorical aid	280	279	278	265	252	272	280	283	1
Federal categorical aid	37	37	38	41	44	45	47	47	28
Special education property tax levies	54	70	80	98	121	110	119	125	134
School districts' general funds	249	251	261	267	282	287	284	303	22
Student enrollment	808,820	812,015	823,527	842,054	858,146	880,587	899,417	913,733	

Source: Office of the Legislative Auditor estimates based on data from the Minnesota Department of Children, Families & Learning.

27 The local property tax levies authorized by the state are based on special education personnel and transportation expenses. Since the levy for personnel expenses is part of the state aid formula for special education, the Minnesota Department of Children, Families, and Learning views this levy as part of state aid, analogous to the property tax levy included in foundation aid for regular education. We do not regard special education local property tax levies as state aid because the levies are based on tax rates that vary among districts and depend largely on the amount districts spend on special education.

Consequently, the share of special education spending funded by state categorical aid declined from 45 percent in fiscal year 1988 to 37 percent in fiscal year 1995, while the share financed by special education property tax levies increased from 9 to 17 percent. The federal share remained about 6 percent, and the districts' general fund share remained about 40 percent.

The main reason that state categorical aid for special education did not increase as fast as special education spending is that the Legislature reduced the state's share of reimbursement in its special education funding formula. In fiscal year 1985, the state reimbursed school districts for 70 percent of special education staff salaries. Beginning in fiscal year 1986, the state imposed a cap on salary reimbursement of $19,500 per employee. Staff from the Minnesota Department of Children, Families & Learning told us that initially the reimbursement cap had little effect on state aid. However, as salaries increased and as other legislation reduced the reimbursement percentage and also the cap, school districts had to fund a larger share of special education locally. Effective in fiscal year 1988, the Legislature reduced the state's reimbursement percentage to 66 and the reimbursement cap to $18,400. Further reductions made the reimbursement percentage 55.2 and the salary reimbursement cap $15,320 during fiscal years 1993 through 1995.

Since fiscal year 1986, the state has authorized school districts to levy property taxes without voter approval to help make up for losses in state aid. In fiscal year 1995, the amount that could be levied equaled the difference between state special education aid for salaries and 68 percent of the salaries of eligible special education personnel.

Recent changes in Minnesota's funding formula may increase the state's share of special education funding.

The 1995 Legislature enacted a new funding formula that could increase the state's share of special education funding between fiscal years 1996 and 2000.[28] Under the new formula, state aid gradually replaces the portion currently paid by state authorized property taxes. The state began phasing out the special education property tax levy in fiscal year 1997 and is scheduled to replace the entire levy with state aid in fiscal year 2000. If the state had fully funded the amount funded by state authorized property tax levies in fiscal year 1995, the state would have funded 53 percent of school district spending on special education services instead of 37 percent.

Another recent change in the funding formula may provide some incentive for school districts to contain spending increases. Under the 1995 legislation, state special education aid for fiscal year 1996 was distributed among school districts based on school district spending during fiscal year 1995 instead of spending during fiscal year 1996, as it would have under the previous funding system. Effective fiscal year 1997, state aid is distributed based on spending two years previous. Also, the formula adjusts school districts' aid based on school districts' enrollment changes over the two year period.

28 *Minn Laws* (1st Spec. Sess., 1995) Chap. 3, Art. 15, Sec. 10-25.

SUMMARY

The percentage of special education students increased from 7.4 percent in fiscal year 1977 to 10.9 percent in 1996. The percentage increased rapidly after the federal government enacted the Individuals with Disabilities Education Act in 1975, going from 7.4 percent of total enrollment in 1977 to 9.4 percent three years later. Subsequently, the percentage of special education students grew at a slower rate, reaching its highest rate to date of 10.9 percent in fiscal year 1996. However, this rate is slightly lower than in the Midwest or the nation as a whole.

Between fiscal years 1988 and 1995, school districts' total expenditures rose by 11 percent, compared with 22 percent for spending on special education services, after adjusting for inflation and student enrollment. Most of the spending growth for special education services was due to increased number of staff per special education student and higher spending on services for emotional or behavioral disorders.

During fiscal year 1995, we estimate that school districts spent about $12,100 per student to educate K-12 special education students, about 2.1 times as much as they spent on regular education students. Overall, districts spent about $1.13 billion educating special education students in fiscal year 1995, including $693 million in special education services and $432 million in regular education and indirect services. In fiscal year 1995, school districts' general funds paid for about 40 percent of the $693 million spent on special education services. Special education property tax levies financed 17 percent, the state's special education categorical programs 37 percent, and federal categorical programs 6 percent.

State and Federal Requirements

CHAPTER 2

As shown in the previous chapter, the number of children served in special education and the cost for these services have generally increased over the last several years. Although the reasons behind these increases are varied and complex, policy makers and special education administrators have pointed to state and federal regulations as factors that drive up cost or incidence. This chapter examines the legal requirements that school districts must meet to receive state and federal funds to serve students with disabilities. Identifying which regulatory provisions can be specifically attributed to state rather than federal mandates may be useful to state policy makers as they seek ways to control special education costs in the future. Specifically, our research focused on the following questions:

- **What does the federal Individuals with Disabilities Education Act (IDEA) require of Minnesota school districts?**[1]

- **How do Minnesota laws and rules differ from what is minimally required by the federal government?**

To answer these questions, we compared federal laws and regulations on special education to state laws and rules in this area. We also talked with special education administrators and staff, representatives from various advocacy groups, and staff from the Minnesota Department of Children, Families & Learning and the U. S. Department of Education. Finally, we reviewed the literature on special education.

We focused on the major differences between the federal Individuals with Disabilities Education Act and various state laws and rules for special education. We did not examine what is required under other related federal laws such as the Rehabilitation Act of 1973 (Section 504) and the Americans with Disabilities Act of 1991 that may give special education students and students who do not qualify for special education but who have a disability further rights. Also, we did not examine federal court rulings, complaint decisions, policy letters issued by the federal government, or additional requirements that school districts may have adopted. Finally, this analysis does not evaluate the cost or quality of special education services, the effectiveness of the various federal and state requirements that school districts must meet, or school district compliance.[2]

1 P. L. 94-142.

2 The Office of Monitoring and Compliance in the Department of Children, Families & Learning routinely monitors school district compliance with state and federal special education regulations.

Overall, we found that the federal government lays out broad requirements regarding special education eligibility, parent rights, individual education plans that include appropriate related services, and educational services in the least restrictive environment. In contrast, the state determines specific entrance and exit criteria for disability groups and due process procedures while local school districts determine the amount and type of instruction and related services students may receive. Our analysis showed that Minnesota policy makers have adopted additional or more specific state requirements that: extend special education to more children than required under federal law, implement a multi-faceted due process system, lay out specific deadlines for school districts, establish some maximum student/teacher caseloads, and impose additional paperwork requirements related to delivering special education services.

MAJOR FEATURES OF SPECIAL EDUCATION LAW

Federal law guarantees all children with disabilities a free, appropriate public education.

The Individuals with Disabilities Education Act guarantees all children with disabilities a free, appropriate public education. According to federal regulations, this means special education and related services that: (a) are provided at public expense, under public supervision and direction, and without charge, (b) meet state and federal standards, (c) include preschool, elementary, and secondary school education, and (d) are provided according to a written individual education plan.[3] An appropriate education means that the individual educational needs of children with disabilities are being met as adequately as the needs of children without disabilities. This includes not only their academic needs, but their social and developmental needs as well.

As indicated in Chapter 1, states are not specifically required to participate in IDEA, although they are still obligated under the Fourteenth Amendment to the U.S. Constitution to provide children with disabilities a free, appropriate public education. States that choose to participate in IDEA receive federal funds to help them serve children with disabilities 6 through 17 years of age.[4] Participating states are not required to serve children with disabilities from birth through 5 years of age or from ages 18 through 21 if their own laws preclude it. However, states that serve these children receive additional federal funds. We found that:

- **Minnesota has chosen to participate in all facets of IDEA and receives federal funds to help ensure that all children with disabilities from birth through 21 years of age are provided a free, appropriate public education.**

Minnesota has participated in IDEA for students ages 6 to 21 years since the 1976-77 school year, the first year of implementation. Since then, the Legislature has expanded its special education program to include both younger and older children. In 1985, school districts were required to serve children with disabilities

3 Throughout the rest of this chapter, we use the term special education to also include related services.

4 All states have chosen to participate in IDEA.

ages 3 through 5 years and, in 1987, children with disabilities from birth through 2 years of age were added. Finally, in 1994, special education eligibility was extended to students until their twenty-second birthday.

Below we describe what the federal government minimally requires of school districts at each step in the process of providing special education services to children with disabilities ages 3 through 21.[5] We then examine how state laws and regulations impose additional requirements on school districts, focusing on the major differences between IDEA and state requirements. It should be noted that children with disabilities receive special education in a complex and highly regulated environment, often with diverse agencies and service providers involved. In addition, federal and state reimbursement systems require significant documentation from school districts. To further complicate matters, local mandates may place more requirements upon special education administrators and staff.

Identification and Referral of Children

Identification, the first step in the process of providing special education to children, refers to the continuous and systematic efforts of school districts to identify, locate, and screen children, birth through 21 years of age, who might need special education. Referral is the formal, ongoing process that school districts use to review information about children suspected of having a disability and needing special services and sending them to special educators to determine program eligibility.

School districts must identify all children who might need special education.

Federal Requirements

The federal government requires each school district to have procedures that ensure that all children living in their jurisdiction who have a disability, regardless of age or severity, and who need special education are identified, located, and assessed for eligibility. Although IDEA does not require that school districts *actually provide* special education services to all children under 6 years of age or over 17 years, districts must locate them. This "child find" process must also include a way of determining which children are currently receiving needed services and which are not.

Additional State Requirements

Although the federal government requires that districts have procedures in place to identify all children who might need special education, it does not explain what these systems should look like. For the most part, state regulations specifically impose two additional requirements upon school districts, as shown in Figure 2.1.

5 We excluded children with disabilities from birth through 2 years of age (infants and toddlers) because state and federal requirements as well as services for this age group are different than they are for older children. In addition, infants and toddlers make up less than one percent of special education enrollment.

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Figure 2.1: Identification and Referral: Additional State Requirements

School Districts Must:

- Have regular education teachers try two prereferral interventions before referral for special education eligibility testing.
- Conduct referral reviews before testing students for special education eligibility.

Source: Office of the Legislative Auditor review of state and federal regulations.

First, the state has implemented some procedures to help divert some children from special education by better meeting their needs in the regular education system. For example:

- **Minnesota law requires that regular education teachers try at least two different instructional strategies or alternatives in their classroom before referring students to special education for eligibility testing.**

These procedures, called prereferral interventions, may include trying special work groups, using different materials or teaching methods, or using specific rewards or incentives for students who are having problems in the regular classroom.

Second:

- **Minnesota regulations require that school districts specifically review all special education referrals before testing students for eligibility.**

Through this process, known as the referral review, districts look at students' performance in nine areas to help decide whether special education testing is warranted and what types of tests should be used. The nine areas are: intellectual functioning, academic performance, communications, motor ability, vocational potential, sensory status, physical status, emotional and social development, and behavior and functional skills. In addition, district staff must look at whether the prereferral interventions that the regular education teacher tried were adequate. Finally, districts use the referral review process to select who should be involved in the formal assessment of the child to determine special education eligibility, including those who may implement a program for that child. Upon the recommendation of a 1994 legislative task force, school districts have not had to document these reviews beginning with the 1995-96 school year.[6]

Assessment for Eligibility

Assessment is the process of using formal and informal procedures to determine students' eligibility for special education. Formal procedures include medical

6 Minnesota Department of Education, *Task Force on Education for Children with Disabilities Final Report* (St. Paul, January 1994).

diagnoses as well as norm-referenced, validated tests such as the Stanford-Binet Intelligence Test and the Woodcock Johnson Psychoeducational Battery. Informal procedures include classroom observations, behavior checklists, and personal interviews. Results from these procedures should reflect students' present levels of performance and are to be used as the basis for later educational planning.

Federal Requirements

Federal regulations require that students be tested for special education eligibility before receiving special education. Districts use the assessment process to determine whether students have a disability and whether they are eligible to receive special education services. Simply having a disability does not automatically qualify a student for special education. According to federal regulations, children with disabilities means those with: mental retardation, hearing impairments including deafness, speech or language impairments, visual impairments including blindness, serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, specific learning disabilities, deaf-blindness, or multiple disabilities, and who, because of these impairments, need special education. While federal regulations define each of these disabilities, they do not specify the exact criteria that must be met to qualify.

As discussed earlier, states need not serve children with disabilities ages 3 through 5. When states elect to serve this group, they must serve all such children with disabilities and may further elect to serve children in this age group who are experiencing developmental delays. Similarly, providing early intervention services to children birth through 2 years of age who have a developmental delay or a diagnosed physical or mental condition that is likely to result in a developmental delay is optional.

Once referred to special education, multidisciplinary teams that include at least one teacher or other specialist who is knowledgeable about students' suspected disabilities determine whether they are eligible for special education. For children suspected of having a learning disability, the team must include their regular education teacher and at least one person qualified to conduct individual diagnostic examinations, such as a school psychologist, speech-language pathologist, or a remedial reading teacher.

Special education assessments must cover all areas related to a child's suspected disability. Assessment teams must select and administer valid assessment materials that are not culturally or racially discriminatory and are in students' native language. Trained personnel must administer the tests. No single procedure, such as an intelligence test, can be used to determine eligibility or an appropriate education program.

According to federal regulations, districts must notify parents "a reasonable amount of time" before formally assessing their children. Parents must consent in writing the first time that their child is assessed for special education. If they refuse to consent, districts cannot override their decision without obtaining the approval of an impartial hearing officer through a formal hearing. Once a child has

Special education students must be reassessed at least once every three years.

received special education, parents need not specifically consent to later assessments (referred to as reassessments, which must occur at least once every three years). In addition, school districts must reassess students whenever their parents or the students themselves (if they are over 18 years of age) request it. Districts cannot refuse these requests without initiating an administrative hearing first.

Special education assessments are generally done at the school district's expense. Parents who disagree with the district's assessment may obtain an independent one at the district's expense. If the district does not want to pay for an independent assessment, it must initiate an administrative hearing where a hearing officer decides who will pay for it.

Federal regulations require that district staff write assessment summary reports for children suspected of having a learning disability. As we saw in Chapter 1, students with learning disabilities made up the largest share of the special education population in fiscal year 1996--about 38 percent. Thus, they probably comprise the largest proportion of annual assessments. Reports on these students must document: (a) whether the child has a learning disability and the basis for that determination; (b) the relevant behavior observed in the child and the relationship of that behavior to academic functioning; (c) any educationally relevant medical findings; (d) the existence of a severe discrepancy between intellectual ability and achievement -- the main criterion for a learning disability; and (e) the effects of economic, cultural, or environmental disadvantage on the child. Team members must certify in writing that the report reflects their conclusions; dissenting members must each submit a separate statement.

Additional State Requirements

As shown in Figure 2.2, Minnesota has adopted various assessment provisions beyond those that are required by the federal government. For example, federal regulations generally do not contain specific deadlines for school districts. However, our analysis showed that:

- **Minnesota regulations contain specific deadlines that school districts must meet when assessing students and notifying parents about assessment plans.**

For example, when parents request that their child be assessed for special education eligibility, districts must notify parents of their decision within 10 school days after receiving their request. Assessments of students who have never received special education before (referred to as initial assessments) must be completed within 30 school days of parental consent. Districts must complete all other assessments within 30 school days after they receive parents' consent or after the 10 day response time has elapsed.

In addition:

Figure 2.2: Assessment: Additional State Requirements

School Districts Must:

- Respond to parents' request for assessment with 10 days.
- Conduct assessments within 30 days of parental consent.
- Assess transition needs by age 14 or grade 9, which comes first.
- Write assessment summaries for all students tested for special education eligibility.
- Include behavior intervention component in assessment, when appropriate.
- Assure that all special education children from birth through 21 years of age meet state eligibility criteria.
- Document each case where the eligibility criteria are overridden.
- Adhere to state exit criteria for students who leave special education.
- Write exit summaries for some special education students.

Source: Office of the Legislative Auditor review of state and federal regulations.

- **Minnesota rules require that districts assess certain "transition" needs of special education students two years earlier than the federal government.**

Transition needs refers to special services that are designed to move special education students out of secondary school into other activities like postsecondary education, employment, adult services, independent living, or community participation. According to state regulations, districts must conduct, as part of the assessment process, a multidisciplinary assessment of secondary transition needs by age 14 or grade 9, whichever comes first, as opposed to age 16 in federal regulations. Areas of assessment must be relevant to students' needs and may include work, recreation and leisure, home living, community participation, and postsecondary training and education opportunities. In contrast, federal regulations do not specifically require districts to assess students' transition needs, although these needs must be addressed later when individual education programs are developed.

In addition, we found that:

- **Minnesota has chosen to provide special education to more groups of children than minimally required by the federal government.**

As discussed earlier, Minnesota has chosen to serve all children with disabilities from birth through 21 years of age. In addition to serving children ages 3 through 5 who have specific disabilities or conditions known to lead to disabilities, the state has elected to provide special education to children in this age group who have substantial developmental delays.

Federal regulations set forth broad definitions of nine disabling conditions which could qualify children for special education. We found that:

- **With one major exception for serious emotional disorders, Minnesota has adopted definitions for disability categories that are largely consistent with federal definitions.**

The federal definition of serious emotional disorders excludes children who are socially maladjusted and focuses solely on children with serious emotional problems. However, the state's definition includes children who have sustained disorders of conduct or adjustment when it adversely affects educational performance. In Minnesota's regulations, this disability category is called emotional or behavioral disorders. It is not possible to determine how many more students Minnesota may have chosen to serve through special education because the eligibility criteria do not require diagnosing or distinguishing between emotional and behavioral disorders. Also, some professionals have argued that there is no practical way to separate emotional problems from behavioral problems.

State regulations set forth special education eligibility criteria.

Federal regulations generally leave it up to individual states to determine the specific criteria that a child would have to meet to qualify for special services.[7] As we discussed in Chapter 1, simply having a disability does not necessarily make a child eligible for special education. Until the 1991-92 school year, Minnesota did not have statewide eligibility criteria. School districts could use either the eligibility guidelines that the Department of Education had developed or they could develop their own criteria. As might be expected, eligibility varied widely around the state.[8] To increase consistency, the 1989 Legislature required that the Department of Education develop and the State Board of Education adopt statewide eligibility criteria for special education.[9] Our analysis showed that:

- **Minnesota regulations require that students who receive special education services meet the eligibility criteria for at least one of 13 special education categories.**

For example, federal regulations do not establish criteria to help school districts identify students with mental impairments, but simply defines the disability to mean "subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior."[10] In contrast, the state's entrance criteria for mental handicaps further require that such students (a) have an intelligence quotient below 70, and (b) perform at or below the 15th percentile on certain behavior measures, such as literacy and vocational competency.

As noted earlier, federal regulations set forth general entrance criteria for learning disabilities, but not for other disabilities. They require that students with learning

7 Federal regulations set forth entrance criteria for learning disabilities only.

8 For greater detail, see: Minnesota Office of the Legislative Auditor, *Evaluation of Special Education* (St. Paul, 1984).

9 *Minn. Laws* (1989), Chap. 329, Art. 3, Sec. 1. The Department of Education has since been renamed the Department of Children, Families & Learning.

10 34 CFR 300.7 (b) (5).

disabilities meet two criteria: (1) they do not achieve commensurate to their age and ability in certain areas, such as oral expression, basic reading skills, or mathematics calculation, and (2) they exhibit a severe discrepancy between achievement and intellectual ability in one of these areas that is not due to some other disability or environmental, cultural, or economic disadvantage. Minnesota's regulations are more specific in that they require a severe discrepancy at least 1.75 standard deviations below the mean for other students of the same age. They also require the assessment team to have enough assessment data to show that a student with a learning disability has an "information processing condition" that results in certain behaviors, such as poor organization or memory skills, in a variety of settings.

The state's criteria for early childhood special education extends eligibility to children through 6 years of age as opposed to 5 years of age under federal regulations. This permits the state to provide special education services to 6 year olds who are developmentally delayed or have a medical condition that hinders normal development, such as fetal alcohol syndrome and maternal drug use, in addition to those identified as having a specific disability.

State regulations determine which students are eligible for special education services, but school districts can override eligibility criteria on a case-by-case basis.

In addition, state regulations set forth eligibility criteria for specially designed physical education programs for special education students who cannot participate in regular physical education programs. To be eligible, students must meet the criteria for one of the state's disability categories and have a substantial delay or disorder in physical development. Regular education students with conditions such as obesity or temporary illnesses or injuries are not eligible for these physical education programs.

Minnesota regulations permit school districts to override the state's eligibility criteria on a case-by-case basis. Special education directors must record each time that they permit students to receive services even though they have not met the state's eligibility criteria. They must document why the eligibility criteria yielded invalid results and what data were used instead to determine eligibility. Team members who do not agree with the override must sign statements that explain why they disagree. According to data collected by the Task Force on Education of Children with Disabilities, school districts seldom use this process.[11]

Unlike federal regulations, state regulations set forth general criteria for leaving special education. According to state rules, special education must be discontinued under the following circumstances: students have met their individual education plan goals and objectives and can succeed in regular education or community programs without special education; the medical disease or condition has been corrected; the physical or other health impairment no longer adversely affects educational performance; students have successfully completed either district or IEP graduation requirements; or they are 22 years of age.

Although we did not examine whether state regulations *should* exceed federal requirements, we did find that state regulations require more paperwork of school

11 Minnesota Department of Education, *Task Force on Education for Children with Disabilities II Final Report* (St. Paul, January 1995), 11.

districts than federal regulations alone.[12] For example, as we discussed earlier, the federal government requires districts to write assessment summaries whenever students are tested for a learning disability. We found that:

- **State regulations go considerably beyond federal provisions by requiring districts to write assessment summaries for all students tested for special education eligibility.**

In 1995, the State Board of Education amended the content of assessment summaries to make them less repetitive and to reduce districts' paperwork. Although these summaries are not as specific as those required by the federal government for learning disabilities, they must include: assessment results and interpretations, students' present levels of performance in the areas assessed, eligibility status, names and titles of assessment team members, and report date. As we discuss later in Chapter 3, almost two-thirds of special education directors who we surveyed in 1996 said that paperwork involved some or much wasteful or unnecessary spending in their district. As we noted in Chapter 1, districts assessed 5,725 students who did not qualify for special education during fiscal year 1995 and another 256 who qualified but were not receiving services.

In addition, our analysis showed that:

- **State regulations require that assessment teams specifically analyze students' negative or offensive behavior whenever certain regulated procedures to change students' behavior may be used.**[13]

Under certain circumstances, district staff may use certain "behavior intervention" techniques to try to teach students to use appropriate behavior in place of offensive or dangerous behavior. These techniques include using manual, mechanical, or locked restraints, time outs for seclusion, and temporarily delaying or withdrawing food or water. Assessment teams must analyze the purpose, effect, and seriousness of the offending behavior and document that they have ruled out any treatable cause for it, such as a medical or health condition.

Finally:

- **Minnesota regulations require that school districts write exit summaries for some students who leave special education and return full time to regular education.**

These summaries must indicate whether students achieved their latest individual education plan goals or objectives, their most recent assessment results, and any recommendations about future needs. Recently, the state has reduced its requirements in this area. Before the 1994-95 school year, state regulations required that

12 The 1994 report of the Task Force on Education for Children with Disabilities made numerous recommendations to reduce some of the paperwork that is required of school districts. Most of these recommendations were adopted for the 1995-96 school year. See: Minnesota Department of Education, *Final Report* (1994).

13 The 1989 Legislature directed the State Board of Education to adopt a behavior intervention policy to prevent abuse of school children.

school districts conduct follow-up reviews at least one year after students leave special education and return to regular education full-time. These reviews had to be done at least 12 months after special education services were discontinued to determine if school progress was satisfactory. Since the 1995-96 school year, state rules simply permit students to be readmitted to special education programs within 12 months of exiting without having to go through the prereferral and assessment processes if they have been recently tested and current performance data are available.

Finally, federal regulations require that students receiving special education be assessed at least once every three years. To help reduce needless testing, state regulations were amended in 1995 to require that, if intelligence test results from the two previous reassessments are consistent and valid, then reassessing intelligence is not necessary. However, districts must still reassess students in other areas, such as achievement.

Individual Education Plans

Special education students must have individual education plans.

Individual education plans (IEPs) refer to special education students' personalized, written educational plans that are developed in team meetings, using data from the assessment process. They include, among other things, individual goals and objectives for each student and the specific special education services that they will receive.

Federal Requirements

School districts are responsible for initiating and conducting team meetings to develop, review, and revise special education students' IEPs. Generally, at least four individuals should be present at team meetings: one or both parents; the child, if appropriate; the child's teacher; and another district staff person qualified to provide or supervise special education and authorized to commit district resources. If the district is developing its first IEP for a student, either a member of the assessment team or another member of the IEP team who is knowledgeable about the test procedures used and the results obtained must be present. Others may be invited to attend meetings at either the district's or parents' discretion.

If neither parent can attend, the district must obtain their input in other ways, for example through individual or conference telephone calls. Meetings can be conducted without parents present when districts are unable to convince them to come. In these cases, districts must keep records of their attempts to arrange meetings at mutually agreed upon times and places. These records may include detailed listings of telephone calls made or attempted and their results; visits to parents' homes and their results; and correspondence.

When districts expect to discuss students' transition needs, they must invite the students to the meeting as well as representatives of other agencies that might provide or pay for training or other transition services. If students cannot attend, districts must consider their interests and preferences. If invited agencies cannot

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attend, districts must obtain their participation in other ways, for example, conference telephone calls.

Individual education plans are developed in team meetings.

According to federal regulations, school districts must hold team meetings to develop IEPs within 30 calendar days after determining that special education is needed. After that, districts must initiate and conduct meetings to review each student's IEP at least once a year. More IEP meetings are required under certain circumstances. For example, if other agencies do not provide agreed-upon transition services, districts must call a meeting to identify other strategies for meeting transition objectives and, if necessary, revise the IEP.

According to the federal government, IEPs must be written at team meetings and districts cannot come to an IEP meeting with one already prepared. Furthermore, they must be implemented as soon as possible after being developed. These plans must include:

(a) A statement about the child's present level of educational performance.

(b) Annual goals and short-term instructional objectives that focus on offsetting or reducing the problems caused by the child's disability.

(c) Criteria and evaluation procedures and schedules for determining, at least annually, whether short-term instructional objectives are being met.

(d) The special education and related services to be provided and the extent to which the child can participate in regular education programs.

(e) Projected dates for initiating services and the anticipated duration of those services.

(f) For students who are at least 16 years of age, needed transition services, including, if appropriate, a statement about each public agency's responsibilities.

In addition, IEPs that deal with transition must indicate whether services are needed in each of the following areas and how those determinations were made: instruction, community experiences, and employment and post-school adult living objectives and, if appropriate, the acquisition of daily living skills and functional vocational assessment. The Individuals with Disabilities Education Act suggests that statements about needed transition services should include commitments by participating agencies to meet any financial responsibilities that they may have. Nothing in federal regulations relieves participating agencies of the responsibility to provide or pay for any transition services that they would otherwise provide to students with disabilities who meet their eligibility criteria.

Additional State Requirements

Figure 2.3 summarizes the major ways in which Minnesota's special education laws and rules require more of school districts than federal regulations. As shown:

Figure 2.3: Individual Education Plan: Additional State Requirements

School Districts Must:

- Hold at least two IEP meetings yearly, and more under certain circumstances.
- Expand IEP meetings to include more people, under certain circumstances.
- Appoint IEP case managers.
- Address transition needs and graduation requirements by age 14 or grade 9, whichever comes first.
- Include conditional intervention procedures in IEPs when appropriate.
- Send parents a copy of their child's IEP whenever there are significant changes.

Source: Office of the Legislative Auditor review of state and federal regulations.

- **Minnesota regulations require more frequent IEP meetings than federal regulations.**

Whereas federal regulations call for at least one annual meeting to develop a student's IEP, Minnesota regulations require districts to hold one annual meeting to develop the IEP and another meeting during the year to review it. In addition, IEP meetings must be held whenever districts use emergency interventions to protect someone from physical injury or emotional abuse or to prevent property damage twice in one month. Certain student discipline measures require more meetings. For example, IEP meetings must be held within five days of students' suspension, as we discuss later.

We found that Minnesota regulations also place more requirements on the composition of the IEP team than do federal regulations. According to state regulations, whenever students are taught by a multidisciplinary team, the team member licensed in the student's primary disability must participate in developing and reviewing the IEP. Districts must designate an IEP team member as IEP manager to coordinate the delivery of services and be parents' primary contact. In addition, the team must include the following persons:

(a) When conditional procedures are being considered, one team member knowledgeable about relevant ethnic and cultural issues;

(b) When appropriate, someone with the same minority or cultural background or who is knowledgeable about the student's cultural or racial background or disability; and

(c) When districts' request one, a county representative to help develop a joint IEP for a student who may need transition services or is eligible for services from other agencies.

Also, we found that:

- **District IEP meetings must address some subjects earlier than the federal government requires while addressing other matters not required by the federal government at all.**

For example, state regulations require that transition services be addressed in IEPs for all students by grade 9 or age 14, whichever comes first. The federal government requires transition planning to begin at least by age 16, but encourages districts to begin the process sooner. Also, in Minnesota, IEPs must address high school graduation requirements by grade 9 or age 14, and annually thereafter by indicating which courses are appropriate for students, which require modification, and which are inappropriate.

In addition, Minnesota requires districts to document what aversive techniques may be used to change special education students' offensive or dangerous behavior, when warranted. These procedures, referred to as conditional interventions, can only be used if they are part of a student's IEP or in certain emergencies.[14] Before using these techniques, the IEP team must: identify the frequency and severity of behavior being targeted; identify at least two positive interventions used and the effectiveness of each; and design and implement conditional interventions based upon the student's present levels of performance, needs, goals, and objectives. The team must document the results of these techniques in the IEP. Furthermore, districts must have policies related to conditional interventions that include ongoing personnel development activities in this area, documentation procedures regarding their use, and procedures for reviewing emergency situations when conditional interventions are used. Finally, Minnesota requires that IEPs: indicate whether students need paraprofessional services and their responsibilities; document which team members attend IEP meetings; address Braille proficiency for students who are blind; and indicate students' present levels of performance in the nine areas discussed earlier.

When school districts propose to significantly change students' IEPs, they must send a copy of the current IEP and any proposed changes to the parents as part of the notification process. State regulations define a significant change to mean that: IEP goals have been completed or need to be revised; a specific service needs to be added or deleted; the educational setting, time needed to accomplish goals, or time spent with students who do not have disabilities needs to be changed; or conditional intervention is needed.

Districts may consider cost in developing individual education plans.

Finally, we found that:

- **In developing a student's individual education plan, Minnesota regulations permit school districts to consider cost in choosing how to provide the appropriate services.**

14 As discussed earlier, these techniques include using manual, mechanical, or locked restraints, time outs for seclusion, and temporarily delaying or withdrawing food or water.

Federal regulations do not directly address the issue of cost in planning services. However, the 1995 Legislature allowed districts to consider cost when deciding among essentially equivalent services available to a child with a disability.[15]

Services in the Least Restrictive Environment

Educational placement decisions are made by the IEP team. The team must ensure that children with disabilities receive their education in the least restrictive environment possible and, to the maximum extent appropriate, are educated with children that do not have disabilities. As discussed in Chapter 1, the least restrictive environment is a regular education classroom and the most restrictive is a self-contained residential program located off-site.

Federal Requirements

Special education students must be included in regular education classes whenever possible.

Federal law requires that special education students have access to the same variety of educational programs and services as students without disabilities, including art, music, industrial arts, homemaking, and vocational education. Districts must notify special education students about the availability of vocational programs at least one year before the students are eligible for these programs, but at least by the beginning of the 9th grade. Furthermore, districts must ensure that special education students are not steered toward more restrictive career interests than regular education students with similar interests. Finally, special education students must have an equal opportunity to participate in nonacademic and extracurricular activities, such as meals, recess, athletics, recreation, clubs, and student employment.[16]

Each district must have a full continuum of services available in different settings to children with disabilities, including instruction in regular classes, resource rooms, special classes, special schools, home instruction, and instruction in hospitals and institutions.[17] Unless IEPs require some other arrangement, special education students are to be educated in the school that they would normally attend if they did not have a disability and, if they must attend school elsewhere, proximity to home must be considered.

Federal regulations require districts to consider modifying regular education before moving a child to a more restrictive placement, such as a resource room or separate class. Although federal regulations provide little guidance to districts in this area, the courts generally have examined four factors in considering the appropriateness of a placement: the educational benefit of being in the regular class-

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15 *Minn. Laws* (1st Spec. Sess. 1995), Chap. 3, Art. 3, Sec. 1, Subd. 3a.

16 Regarding physical education, special education students must have the opportunity to participate with regular education students unless they are enrolled full-time in a separate facility or need a specially designed physical education program, as indicated in their IEP.

17 Chapter 1 defines the various educational settings.

room, nonacademic benefits, effect on regular education teachers and other students, and cost.[18]

In addition to requiring that school districts educate children with disabilities, IDEA requires that districts provide special education students with whatever related services they might need to learn. Federal regulations define related services as transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education. This includes audiology, counseling, early identification and assessment, medical services for diagnostic or assessment purposes, occupational therapy, parent counseling and training, physical therapy, psychological services, recreation, school health services, social work in schools, and speech pathology.

Districts must provide special devices, like wheelchairs, when students need them in school.

Also, federal regulations require that school districts make assistive technology devices and services available to those students who need them. An assistive technology device is any item, piece of equipment, or system, whether acquired commercially, modified, or customized, that is used to increase, maintain, or improve students' functioning, including specialized computers, books on tape, wheelchairs, and calculators. Assistive technology services help students select, acquire, or use such devices.

Additional State Requirements

For the most part, federal regulations do not regulate how school districts actually provide education services, regular or special, to special education students. However, as shown in Figure 2.4, Minnesota's laws and regulations go beyond federal requirements in some important ways. For example:

- **State regulations set forth specific staffing arrangements under certain circumstances.**

Since the 1995-96 school year, the maximum number of children that a teacher can serve (referred to as teacher caseload) in any early childhood special education program is from 12 to 14 children, depending upon the children's ages. Early childhood programs, which serve children from birth through 6 years of age, can be located in a variety of settings, including home, district-operated early childhood special education classrooms, and certain community-based programs that are licensed by the Department of Human Services. State rules require that districts lower caseloads based upon students' severity of disability or the delay, travel time, and number of different programs serving the students.

District-operated early childhood special education classes must use at least one paraprofessional while children are in attendance. The maximum number of students in a classroom with one teacher and one paraprofessional is 8; the maximum number with an early childhood education team of two or more professionals is 16.

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18 Edwin W. Martin, Reed Martin, and Donna L. Terman, "The Legislative and Litigation History of Special Education," *The Future Of Children* (Center for the Future of Children: Los Altos, Spring 1996), 35.

Figure 2.4: Services in the Least Restrictive Environment: Additional State Requirements

School Districts Must:

- Adhere to maximum teacher caseloads for early childhood special education students and students who receive special education services for at least half the school day.
- Employ a special education director, either solely or in conjunction with other districts.
- Provide a minimum number of hours of instruction to early childhood special education students and students in care and treatment.
- Award special education students who graduate from high school diplomas identical to those received by regular education students.
- Transport students who attend sectarian schools to a neutral site for special education.

Source: Office of the Legislative Auditor review of state and federal regulations.

State-required teacher caseloads for students ages 7 through 21 who receive special education for at least half but less than a full day range from 3 to 15 students per teacher and caseloads for teachers of students who receive special education for a full day range from 4 to 8, depending upon the specific disability and the number of paraprofessionals. Teacher caseloads for students receiving services less than half of the day are based upon local district policy.

In addition, state regulations set forth certain administrative staffing arrangements. School districts must employ a special education director, either singly or in cooperation with other districts. Rules specify the conditions under which a director may be employed full or part time, based upon enrollment size or the number of cooperating districts.

While federal regulations do not address the length of the school year for special education students, federal courts have held that districts must have extended year services available for some special education students.[19] This means that districts must make special education services available during the summer and other regular school vacations when necessary. Thus:

- **Minnesota regulations require that school districts make special education services available year-round to students whose condition would significantly deteriorate without them.**

During the summer, districts only need to maintain students' knowledge and skills, not add to them.

However, during the summer and other vacations, districts need to only maintain special education students' knowledge and skills, not add to them. For example, if a child would be likely to forget the alphabet over the summer, districts would have to provide special services to help the child remember it. However, if the child always had problems identifying which letters were vowels, the district would not be expected to resolve this during the summer. Also, special education

19 Martin, Martin, and Terman, "History," 36-37.

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services need not be academic. For example, districts might help students maintain social skills by paying for park-based summer recreation programs.

Also, we found that:

- **State rules specify the minimum duration of special education instruction for students who are in certain care and treatment and early childhood special education programs.**

Students who receive care and treatment include those in substance abuse treatment centers, shelters, hospitals, correctional facilities, and day treatment mental health programs, as well as home.[20] Special education students who receive care and treatment services full time outside their schools for more than 170 days must receive instruction that is tailored to their individual needs for at least one-half the normal school day; students who are served at home must receive at least an average of two hours a day of one-to-one instruction. Students placed for less than 171 days must receive small group instruction for at least one-half the regular school day or at least an average of one hour a day of one-to-one instruction. For early childhood special education, students must receive a minimum of one hour per week of direct or indirect services.

Federal regulations do not address graduation requirements for special education students. As indicated earlier, state regulations mandate that graduation requirements be delineated in IEPs. Special education students may have their own individual graduation requirements or they may be required to meet all or part of the same requirements as for regular education students. Regardless, state law requires that, upon completing secondary school, special education students who have satisfactorily met their IEP objectives must receive diplomas that are identical to those of regular education students.

Federal regulations do not specifically prohibit districts from delivering some special education services to nonpublic school students at their own schools.[21] However:

- **Minnesota regulations require that school districts transport students who attend sectarian schools to a neutral site to receive special education services from them.**

Neutral sites are public centers, nonsectarian nonpublic schools, and other locations that are not physically or educationally identified with the functions of the nonpublic school. For example, students from a sectarian school who need

20 School districts are financially responsible for educating students who are placed for care and treatment, including special and regular education students. A legislative task force examined several issues relating to educating children in care and treatment and made several recommendations to improve service delivery. See: Minnesota Department of Education, *Task Force II Final Report* (1995).

21 In 1993, the U. S. Supreme Court ruled that school districts could use public funds to pay for certain neutral services in sectarian schools. See *Zobrest v. Catalina Foothills School Dist.*, 113 S.Ct. 2462 (1993). Since that time, various circuit court rulings have held that states pay for such services while others have not. Currently, the State of Minnesota is involved in a lawsuit that would require it to provide paraprofessional services to two disabled children in a sectarian school.

special speech services must travel to another location, such as a public school or clinic, to receive them from a school district. Special education services that are directed at sectarian staff, such as consultations, must also be provided off-site or by telephone. However, diagnostic and health-related services may be provided at a sectarian school. On the other hand, state regulations permit school districts to deliver special education services to students who attend nonsectarian schools

Finally, our analysis also showed that:

- **Minnesota regulations set forth specific suspension and expulsion policies that are absent in IDEA but present in other federal laws.**

1994 amendments to the federal Improving America's Schools Act help change the ways schools can deal with disciplining special education students and Minnesota regulations incorporate these elements. For example, under certain circumstances, state regulations permit the IEP team to place special education students in interim alternative placements for up to 45 days, even if parents object. Minnesota law has such a provision when students with disabilities bring guns to school.

Special education students may be suspended if their offending behavior is not related to their disability.

Minnesota's statutes permit school districts to suspend special education students only if their offending behavior is not related to their disability.[22] Such decisions are made either by IEP teams or through administrative hearings brought under the Minnesota Pupil Fair Dismissal Act.[23] State regulations require that IEP teams meet within 5 school days of a suspension to determine whether the misconduct is related to a disability and to review the IEP to see if changes are warranted. Special education students cannot be suspended for more than 10 consecutive days.[24]

Likewise, school districts cannot expel or exclude special education students from school when it has been determined in an IEP meeting or administrative hearing that the offending behavior is related to their disability. Expulsion prohibits students from attending school for one year and exclusion prohibits them from attending for the remainder of the school year. When the offending behavior is not related to their disability, they may be excluded or expelled, although districts must still provide special education services to them.[25]

Due Process

Due process refers to parents' rights and responsibilities in all aspects of acquiring, developing, planning, and implementing special education for their children.

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22 *Minn. Stat.* §127.27, Subd. 10.

23 *Minn. Stat.* §127.26-127.39.

24 According to data collected by the Department of Children, Families & Learning, 17, 21 and 33 percent of suspensions reported by a sample of rural, suburban, and urban school districts respectively involved students with disabilities. See: Minnesota Department of Children, Families & Learning, *Student Suspension and Expulsion*, (St. Paul, January 1996), 12.

25 Expulsion or exclusion would represent a significant change of placement for a special education student and would therefore require the IEP team to rewrite the student's IEP.

Federal Requirements

Federal regulations require that parents receive written notice "a reasonable time" before districts propose to initiate or change, or refuse to initiate or change, the identification, assessment, or educational placement of their child. Districts must write these notices in a language or manner that is understandable to the parents. In addition, notices must include an explanation of all procedural safeguards available to parents; a description of what is being proposed and why; other options considered and why they were discarded; evaluation procedures, tests, records, or reports used as a basis for the proposal; and any other relevant factors.

Federal law guarantees parents certain rights.

There are specific notice requirements depending on the type of notice involved. Regarding IEP meetings, districts must try to ensure that one or both parents are present or given the opportunity to participate by notifying them "early enough" about an IEP meeting. Districts must schedule meetings at mutually agreed upon times and places. The meeting notice must include the meeting's purpose, its time and location, and who will attend. For meetings that will deal with transition services, notices must indicate so, invite the student, and list other agencies invited.

Notices about assessment and placement decisions must inform parents that their prior, written consent must be obtained before a district initially assesses their child. However, if state law requires parents' consent before initial assessment (as it does in Minnesota), state procedures govern the agency's ability to override parents' refusal. Notices must inform parents of their right to obtain an independent assessment of their child's needs that may, under certain circumstances, be done at district expense; districts must provide parents, upon request, information about where to obtain one. Also, notices must inform parents that, during a hearing or complaint process, the child's educational placement will not change, unless parents and the district agree.

School districts' notices about hearings must inform parents that they or the district may initiate an administrative hearing on any matter related to a proposal or refusal to initiate or change the identification, evaluation, or placement of their children. Notices must inform parents that hearings will be conducted by the state agency or local district, whichever is designated in statutes (in Minnesota, the school district is designated) and that, upon request, the district will inform them of the availability of free or low-cost legal services. Districts must inform parents about who may actually conduct the hearing and that the district has a list of persons, along with their qualifications, that they may review. Districts must inform parents that: (a) they can be represented by an attorney or have other individuals with them; (b) oral arguments must be conducted at a time and place reasonably convenient to them; (c) any party has a right to present evidence, compel witnesses to testify, and confront and cross-examine witnesses; (d) the student can be present; (e) parents may decide to open the hearing to the public; (f) any party can prohibit introducing evidence not disclosed at least five days before the hearing; (g) parents may obtain a record of the hearing and the findings of fact; (h) the hearing officer must render a decision and mail out copies of it within 45 days of the request for a hearing (although an extension may be granted at the request of

either party), and (i) the results of a hearing are final, unless appealed to the state agency.

In the event of an appeal, commonly referred to as a hearing review, the hearing review officer must examine the entire hearing record, ensure that hearing procedures met due process requirements, seek additional evidence if necessary, and give a copy of the written findings and decision to all parties. During such an appeal, the hearing officer may permit the district or parents to present oral or written arguments. The review officer's decision must be mailed out no later than 30 calendar days after districts receive a request for a review unless extensions are granted. Notices must inform parents that the review officer's decision is final, unless they appeal in state or federal civil court. Finally, notices must inform parents that, under certain circumstances, courts may award them reasonable attorney's fees if they prevail.

Finally, federal regulations require the Department of Children, Families & Learning to have a written complaint system. Parents may file a complaint with the department if they think that state or federal laws and regulations have been violated. The department's Office of Monitoring and Compliance must investigate these complaints.

Additional State Requirements

Overall, we found that:

- **State policy makers have chosen to set up a multi-faceted dispute resolution system for parents and districts, with specific deadlines that school districts must meet.**

The Individuals with Disabilities Education Act requires that each state designate one entity, either the state education agency or the local school district, to be responsible for conducting administrative hearings. However, states that choose to have local districts responsible for holding administrative hearings must also have a state-level hearing review process. In Minnesota, the Legislature has chosen to have local school districts responsible for conducting administrative hearings. Thus, we also have a state-level hearing review process.

Federal regulations require that hearings be held whenever parents request it and whenever districts refuse parents' request to assess a student for special education services. In addition, state regulations require hearings whenever parents refuse to provide written permission for an initial assessment or placement of their child.

As shown in Figure 2.5, we found that:

- **Minnesota statutes and rules place considerably more requirements on school districts regarding the administrative hearings process than do federal regulations.**

Figure 2.5: Due Process: Additional State Requirements

School Districts Must:

- Conduct administrative hearings.
- Submit a brief within 5 days when districts request a hearing or respond to parents' brief within 5 days of receipt, with additional findings available at least 5 days before the hearing.
- Along with parents, agree on the selection of the hearing officer.
- Send written notices about the time and location of the hearing to parents 10 days in advance.
- Hold administrative hearings within 30 days of request.
- Send parents a witness list within 5 days of request.
- Bear the burden of proof during the hearing.
- Prove its case with a preponderance of evidence to be upheld by the hearing officer.
- Allow hearing decisions to be appealed to the Commissioner of Children, Families & Learning.
- Inform parents about the availability of low-cost legal services.
- Offer parents conciliation meetings to resolve differences.
- Make mediation services available as an alternative to the administrative hearings process.

Source: Office of the Legislative Auditor review of state and federal regulations.

The 1995 Legislature amended the state's due process procedures to address some of the concerns of special education professionals and hearing officers, which we discuss in Chapter 3.[26] Currently, whoever requests a hearing must give the other party a brief written statement regarding the particulars of their objection, the reasons for it, and the remedies sought within 5 business days after requesting a hearing.[27] The other party must provide a written response within 5 days of receipt.

School districts must provide parents with a written notice of their rights and the procedures for the administrative hearings process within 5 days after their request for a hearing. This includes informing them on a variety of matters as listed in Figure 2.5, such as the selection of the hearing officer, access to witness lists and other written documents, and deadlines for issuing rulings.

Also, state regulations require districts to inform parents of free or low-cost legal services in their area, whereas federal regulations simply say that this information must be made available, upon request. Minnesota regulations require that all due process notices include a response form indicating whether parents approve or disapprove of the proposed action and identify a person to send it to or call.

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26 Minn. Laws (1st Spec. Sess. 1995), Chap. 3, Art. 3, Sec. 2.

27 Minn. Stat. §120.17, Subd. 3b. (e).

In addition to the formal administrative hearing process:

- **The Minnesota Legislature has implemented two other mechanisms to resolve disputes: conciliation conferences and mediation.**

Minnesota has alternative mechanisms to help resolve disputes.

Although conciliation conferences are not mandated by law, Minnesota statutes indicate that conciliation conferences "serve better than formal hearings to promote communication between parents and school staff and to reach prompt, shared decisions about educational programs for children with a disability."[28] Districts must offer parents the opportunity to meet with appropriate district staff to informally discuss their differences. Parents generally have 10 to 14 calendar days after the district has notified them of a proposed action to object, and districts have 10 days to schedule a conciliation conference after receiving the parents' written objection. Within 7 calendar days after parents and the district agree that the last conciliation conference was held, districts must provide the parents with a written memorandum that states the school's proposed action. These results are not binding in that parents and districts can still use other due process options, such as an administrative hearing, mediation conference, or state or federal civil court.

In addition, Minnesota statutes require that the Department of Children, Families & Learning set up a mediation process as another informal alternative to the administrative hearings process.[29] These sessions are run by trained mediators. Like conciliation conferences, mediation is not binding in that parents may still pursue an administrative hearing or civil court.

SUMMARY

In this chapter, we have compared requirements that school districts must meet under the federal Individuals with Disabilities Education Act with those required under state laws and regulations. Generally, we found that Minnesota regulations place additional or more specific requirements on school districts in a number of areas. First, the state has extended its special education program to permit it to serve more children than required under federal law. On the other hand, it also requires regular education teachers to try alternative methods of dealing with students before referring them to special education for assessment. Second, the state has implemented a multi-faceted due process system that gives parents and districts more opportunities to resolve disputes. As we discuss in Chapter 3, due process procedures are a major source of frustration for special education directors and advocacy groups. Third, unlike federal regulations, Minnesota's regulations set forth specific deadlines that school districts must meet. Fourth, state regulations set forth maximum student/teacher caseloads for some disability groups and educational settings. Fifth, state regulations impose a greater administrative burden on special education staff by requiring additional documentation in some areas.

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28 Minn. Stat. §120.172.

29 Minn. Stat. §120.17, Subd. 3b (d).

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Recognizing which special education requirements can be attributed to state rather than federal laws and regulations may be useful to policy makers as they seek ways to control special education costs. Although our analysis did not examine the cost implications of additional state requirements, some requirements might be expected to increase costs. For example, state criteria that extend special education services to more students than federally required could raise special education costs because more children could be served. Likewise, establishing maximum student/teacher caseloads might effect the overall number of special education staff in school districts. On the other hand, some additional state regulations may save money. For example, requiring regular education teachers to try two interventions before referring children to special education may reduce incidence and decrease unnecessary assessments if done effectively, thereby saving money. Likewise, a multi-faceted due process system as well as some additional paperwork may reduce districts' litigation costs in the long run.

Innovation and Change

CHAPTER 3

As previous chapters have shown, Minnesota serves a broader range of special education students and imposes more exacting regulations than the federal government. Also, the cost and number of special education students have substantially increased over time. This chapter examines how local administrators have responded and looks at what has been done to reduce the financial and administrative pressures that special education places on states and school districts. We asked:

- **How have Minnesota school districts tried to contain special education costs?**
- **Can other agencies, public and private, help school districts pay for special education services?**
- **How have other states funded special education? How could Minnesota's laws and rules be changed to encourage greater economy and efficiency in special education?**

In answering these questions, we focused on what is within state or local control. Besides reviewing state laws and rules, we consulted with interest group members, insurance industry representatives, school district staff, the Department of Children, Families & Learning and its consultants, education researchers, and special education staff in several other states. In addition, 87 percent of the 105 special education directors statewide completed a questionnaire that asked them to identify problems, solutions, and innovations.[1]

Additional changes in laws and rules could help to contain costs and improve special education.

Overall, we conclude that policy makers and school districts have taken numerous steps to administer special education more efficiently and effectively. It is too soon to determine whether the changes made to the special education funding formula by the 1995 Legislature might help to contain future costs. In the meantime, we think that legislators should consider some additional changes in laws and rules, as we describe below.

1 School districts often share special education directors through cooperatives, intermediate districts, and education districts. As a result, the state has 364 school districts but only 105 special education directors.

LOCAL CONCERNS

School district representatives since 1993 have actively participated in legislative task forces, focus groups, and studies that legislators have requested to identify and correct problems in special education. Also, the Commissioners of Health, Human Services, and Children, Families & Learning have identified laws and rules that impede the coordination of education and human services for Minnesota children. As a result, most of the concerns expressed by special education directors in our survey last fall have already been addressed to some extent by legislators and the Department of Children, Families & Learning.

Eligibility Criteria

One of the directors' concerns was about Minnesota's criteria for determining students' eligibility for special education. They particularly questioned the criteria that establish emotional or behavioral disorders, learning disabilities, and other health impairments, which together account for more than half of the state's population of special education students. Some of the directors characterized these criteria as "loose," "liberal," "lenient," "complex," "ambiguous," and costly to apply.

Some of the state's eligibility criteria are confusing and ambiguous to educators.

The Department of Children, Families & Learning found an overall error rate of only 2 percent when it most recently checked a sample of school districts' procedures for determining students' eligibility for special education, and a study in 1994 showed that educators generally approved of and were satisfied with the criteria.[2] However, the 1994 study also found that some educators regard the criteria for emotional or behavioral disorders as "ambiguous and too broad" and that there are few apparent standards on which to base eligibility decisions. The study noted educators' concerns and confusion regarding the definition, concept, and measurement of "information processing," which is central to the definition of learning disabilities. Concerning other health impairments, the study indicated that the criteria are so broad as to allow "many students with minor educational problems" to qualify for special education.

The 1994 Legislature directed a special education task force to examine the state's eligibility criteria, and its members were most concerned about the criteria for other health impairments, which they called "highly confusing."[3] They recommended changes to clarify the criteria and clearly establish that health impairments are the cause of students' education problems. They did not recommend major changes in the criteria for emotional/behavioral disorders or learning disabilities but reported a general need for help in determining the presence of learn-

2 See memo from Thomas Lombard, Department of Children, Families & Learning, "Monitoring Data," to Office of the Legislative Auditor, September 24, 1996, and Hal L. Gritzmacher and Sharon C. Gritzmacher, *Study of Statewide Eligibility Criteria for Special Educatin Services: General Survey Findings* (St. Paul, September 15, 1994) and *Focus Group Summary Report* (July 12, 1994).

3 *Minn. Laws* (1994), Ch. 647, Art. 3, Sec. 26 reauthorized the task force and charged it to recommend changes in special education exit and entrance criteria, caseload requirements, special education services at home and in court-ordered settings, and technology usage. See Minnesota Department of Education, *Task Force on Education for Children with Disabilities II Final Report* (St. Paul, January 1995).

ing disabilities. To date, legislators have not acted upon the task force recommendations.

Financial Arrangements

Several of the directors complained about the number of state-required data elements and computer systems, amount of bookkeeping, level of complexity, and detailed procedures that are needed to obtain reimbursement for special education services. More than one suggested simplifying the formula so that aid would be based on enrollment, possibly with an adjustment for the districts' poverty rates. Similar funding approaches have been implemented in some other states, as we discuss later in this chapter.

Another suggestion was to amend the state's open enrollment law so that the districts where special education students reside are no longer financially responsible for services provided by other districts which the students choose to attend.[4] The students' "home" districts now must pay the bill for special education provided by other districts although they have no input into the program or services provided.

Special education students' "home" districts remain financially responsible when the students enroll in different districts.

Such a change in the open enrollment law would be consistent with the effort to treat special education students as much like their nondisabled peers as possible. Also, the proposed change could give the students' districts a measure of relief. However, the school districts where students reside are generally responsible for paying for special education at various other sites. Another potential problem is that such a change could discourage school districts from operating high-cost programs that attract special education students from other districts.

Assessment and Service Delivery

Directors also identified wasteful spending in connection with assessment or reassessment of students' special education needs, delivery of "related" services such as physical therapy, the process of developing and changing special education students' individual education plans, and other aspects of delivering special education services. The 1994 Legislature addressed such concerns by requiring the former Department of Education to develop guidebooks and other information for school districts.[5] Subsequently, the department published manuals on topics such as student assessment and reassessment, IEP development, and ways to serve students with specific disabilities. In addition, the department has scheduled a best practices manual on physical and occupational therapy to be completed in 1997.

4 See *Minn. Stat.* §124A.036, Subd. 5 (d).

5 See *Minn. Laws* (1994), Ch. 647, Art. 3, Sec. 28 and resulting reports by the Department of Education, including *Minnesota Special Education Due Process Standards* (St. Paul, August 1995) and *Promising Practices in IEP Development* (September 1995). Examples of the department's best practices manuals include *Guidelines for Educational Assessment and Services for Students with Traumatic Brain Injury* (1995) and *Best Practices for Assessing Deaf and Hard of Hearing Students* (1996).

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Paperwork

The directors often referred to the volume and detail of (1) required records of planning and delivering special education services, and (2) personnel time reports that the state requires for reimbursement. The 1994 Legislature dealt with the first type of paperwork by enacting most of the recommendations of a task force which had studied the administrative burdens that special education places on classroom teachers.[6] However, the task force did not address reimbursement-related paperwork nor locally required paperwork, which it noted can be a problem.

Despite some recent reductions, the state requires much paperwork from school districts.

Chapter 2 of this report showed that Minnesota requires more paperwork than the federal government despite recent changes. However, a considerable amount of paperwork can be expected in special education for three reasons. First, many different special educators work separately with individual students, and written records of others' actions are needed to coordinate services. Second, special education confers unique rights and protections that may be the subject of litigation where written documentation is critical. Third, the federal government has made a written document, namely the individual education plan, the basis of each student's special education.

On the other hand, Minnesota's funding formula requires documentation that is unnecessary in some other states. School administrators here must enter data into a special computer system, indicating the name of individual staff members who provide special education services, their payment rate, the number of hours or days of service each staff member provides, and more. Funding formulas elsewhere may be based on readily available enrollment figures.

Due Process

Several of the directors also were concerned about the many administrative procedures that they must perform in order to ensure parents' rights to due process. Nevertheless:

- **The rate of disputes between parents of special education students and school districts has increased in the past few years, although numbers remain small in relation to the student population.**

According to the Department of Children, Families & Learning, it has received greater numbers of complaints annually since 1990.[7] There were 32 complaints in

6 *Minn. Laws* (1993), Ch. 224, Art. 3, Sec. 35, Subd. 6 established a 15-member task force representing all major stakeholder groups. Other elements of the Legislature's charge involved regulatory duplication, outcomes, due process, and coordination of special and regular education. The task force's recommendations are in its final report: Minnesota Department of Education, *Task Force on Education for Children with Disabilities Final Report* (St. Paul, January 1994).

7 A complaint is a signed, written allegation that a school district has violated some aspect of special education laws or rules. See Minnesota Department of Children, Families & Learning, *Special Education Complaint Resolution* (St. Paul, May 21, 1996) and U.S. Office of Special Education Programs, *Monitoring Report: 1994 Review of the Minnesota Department of Education's Implementation of Part B of the Individuals with Disabilities Education Act* (Washington, D.C., December 1994).

fiscal year 1990 or a rate of 39 per 100,000 special education students, compared with 68 complaints in 1995, a rate of 70 per 100,000. No more than four administrative hearings occurred annually between 1990 and 1993, but there were 11 in 1994 and 7 in 1995. This translates into a rate of 5 or fewer per 100,000 in the early 1990s compared with 7 to 12 more recently.

Formal disputes about special education have increased in the past few years.

The Department's records also indicate that it routinely took more than 45 days to reach decisions through administrative hearings between 1993 and 1995.[8] Also, in 82 percent of the cases, the decisions were appealed and reviewed by independent hearing officers. However, the department has targeted this problem, and last year's results show that almost all decisions were reached within 45 days and a smaller percentage of decisions were appealed.

Concerns about the qualifications of hearing officers prompted the U.S. Department of Education to review selected decisions in 1994. The federal monitors concluded that hearing decisions were thorough, complete, and appropriately crafted.[9] Concerns about attorneys' behavior during hearings did not come up in the federal review but have been raised by fellow participants. Some have suggested that these concerns could be alleviated if the Legislature were to give hearing officers specific authority to sanction attorneys.

LOCAL INNOVATIONS

Our questionnaire asked directors whether they have adopted any new practices or procedures to help contain special education costs or improve services for parents and students. In response, 64 percent of the special education directors said that they took steps recently to try to contain special education costs or improve services.

As shown by Table 3.1, the directors listed diverse approaches. However, in following up with special education directors to obtain more detailed information about recent innovations, we found that these innovations fall into a few general categories.

Staffing Changes

One strategy was to use staff more efficiently. For example, special education attendants typically work personally with one student, but a director said that he changed this practice by assigning students with different disabilities to the same classroom so that they can share the same attendant's time. Another said that he hires special education teachers part time rather than full time and uses paraprofessionals to follow up on activities that the teachers initiate. A third described a

8 Memo from A. W. Ciriacy, Jr., Minnesota Department of Children, Families & Learning, to Office of the Legislative Auditor, "Special Education Hearings," September 18, 1996.

9 U.S. Department of Education, *1994 Review of the Minnesota Department of Education's Implementation of Part B of the Individuals with Disabilities Education Act* (Washington, D.C., December 1994), 31-32.

Table 3.1: Special Educators' Recent Cost-Containment or Service Improvement Efforts

	Number of Directors
New or tighter policies	11
More education on site	9
Work more closely with counties	7
More or better intervention through regular education	5
Conduct studies	5
Work more closely with parents	5
Increase use of technology	4
More site-based management	4
Cap budgets	4
Increase teachers' caseloads	4
Hire more staff	3
Stop hiring staff	3
More team teaching	2
Paraprofessionals do more paperwork	1
Obtain third-party payments	1
Assorted other efforts	9

The question was: "Finally, did your district or member districts recently adopt any new practices or procedures to help contain special education costs or improve services for parents or students? (If yes, explain.)"

Source: Office of the Legislative Auditor Special Education Directors' Survey, July-September 1996, n = 91.

cross-categorical teaching strategy combined with the use of specifically licensed special education teachers who are responsible for students with given disabilities at each grade level. Elsewhere, a director gave principals a greater role through site-based management, which made them accountable for all activities in their schools. Previously, the director said principals viewed him as the "super-principal" for all special education students in the district.

Regulatory Compliance

In some instances, special education directors said that they previously provided somewhat more service than was necessary. An example is a district where special education students were assigned to summer school for fixed time periods although some did not need that much instruction. In another district, the special education director told us that he began to follow the state's guidance on related services, rather than "automatically" provide them. A fellow director said his school board adopted a policy to reinforce the legal requirement that special education must be provided in the least restrictive environment. The policy means that preschool children now can be served more often in home settings and day care centers.

A related strategy was to reduce the number of students in special education by using regular education more effectively. State rules require regular education teachers to try two different approaches to help students before referring them for

assessment and possible placement in special education. However, one of the directors told us that teachers had "checked off" this requirement without much deliberation in the past. Another director explained that parents and teachers now must try "everything in the building before labeling a child as special education." Elsewhere, a director reported reducing the overall percentage of students in special education by focusing first on the reasons for students' learning problems and second, if necessary, on their eligibility for special education. So, rather than immediately referring children to special education, the director explained that a team determines probable causes of students' learning problems, such as a missed unit of study, and does what it can to resolve the matter.[10]

Some districts have begun to use regular education more effectively to help students with learning problems.

Policy Changes

A third general strategy was to examine and change local policies and practices. For example, several directors indicated that they have economized by developing their own specialized programs rather than sending students off site. Others mentioned studies that they expect to result in greater efficiency.

A few said they have taken a tougher stance when parents threaten legal action or demand that their children be assessed for special education. Previously, one director told us that her district would "provide whatever parents wanted" for fear of litigation. When the district has promised a legal fight instead, parents have sometimes been willing to compromise. A second director said that parents often request special education assessments to better understand their children, not because they think special education is needed. In such cases, the director informs parents that assessment would take the child out of class for at least 10 hours and cost the district $800 to $2,000. About one-fourth of the parents reportedly have dropped their requests as a result.

Coordinated Service Delivery

Several directors indicated that they had begun working more closely with counties, in one case sharing a social worker, and in another receiving county grants to provide summer programs. This reflects some of the legislation that encourages public agencies to cooperate with each other and provide coordinated services.[11] For example, *Minn. Stat.* §120.1701, Subd. 1, says that the state's policy is to develop and implement comprehensive, coordinated, multidisciplinary, interagency programs that provide early intervention services for the children and their families. *Minn. Stat.* §121.8355 establishes family services and community-based "collaboratives" in which school districts, counties, and public health entities agree to provide coordinated services and integrated funding to address children's educational, health, developmental, and family-related needs. And, as part of the

10 This is known as the "problem-solving approach" to special education and is used also by the Minneapolis school district, which we discuss separately in this chapter.

11 At the state level, *Minn. Laws* (1st Spec. Sess. 1995), Ch. 3, Art. 3, Sec. 14, directed the Commissioners of Children, Families & Learning, Health, and Human Services to find ways to improve service delivery and promote collaboration between the education and human services systems. See Departments of Health, Human Services, and Children, Families & Learning, *Interagency Alignment Report* (St. Paul, February 1996).

state's effort to create a unified, comprehensive children's mental health service system, *Minn. Stat.* §245.4875, Subd. 6, creates a network of local coordinating councils that include educators, health care providers, and representatives of social service and correctional agencies.

The leading example of school districts providing special education in collaboration with other public and private agencies is the Mid-State Education District in Little Falls. About five years ago, the district helped to create the Morrison County Interagency Coordinating Council, which takes a comprehensive approach to providing education, health, and human services for children, youth, and families. In the case of special education, this means that students from birth through 21 receive comprehensive, coordinated services if they have developmental delays or disabilities.[12]

Education district staff told us they have no direct evidence of cost savings but assume that government ultimately saves money by consolidating the application process and minimizing duplication of services. For example, 25 public and private agencies in Morrison County have begun using an intake form with some standard features that facilitate referral from one program to another. Also, the coordinated approach makes services more accessible to parents and students because there is a single point of entry into the system and staff are personally available to help.

Third Party Payments

School districts need not always pay for health-related services for special education students.

Some of the special education directors in our survey were actively developing systems and staff that would allow them to bill third parties for health-related services provided to some special education students. This is possible because school districts are fiscally responsible for educational services but not necessarily for related services such as counseling, occupational therapy, and dispensing medication. Thus, in 1988, Congress authorized schools to seek reimbursement for Medicaid-covered services that they provide to eligible special education students.

The Legislature authorized school districts not only to make themselves eligible for health care service payments from the Department of Human Services but also from private insurers. To further encourage school districts to pursue third party reimbursement, the law says that school districts' special education revenues cannot be reduced by any Medical Assistance or insurance payments that they obtain.[13]

Subsequently, the former Department of Education conducted several studies that identified methods by which school districts could develop third party cost recovery systems. It published a manual on this topic, and consultants followed up with

12 See Morrison County Interagency Coordinating Council, *Bylaws for Family Service Collaborative* (Little Falls, MN: Mid-State Education District, January 1995).

13 *Minn.Stat.* §124.90.

training for school districts.[14] In 1990, one of the department's studies identified many hours of services by health care professionals within schools, particularly for speech and language problems.[15]

In November 1996, records of the Department of Human Services showed that:

- **Education organizations representing 25 percent of school districts had established their eligibility for Medical Assistance payments, and they received reimbursements on behalf of 20 percent of the districts in fiscal year 1995.**

The department's records indicated that 12 of 20 eligible organizations, including individual school districts, special education cooperatives, intermediate districts, and education districts, submitted bills in 1995. They collected $207,100, which was nearly double the amount that 9 school organizations received in 1994 ($110,400).[16] In both years, about a third of the payments went to the Minnesota River Valley Special Education Cooperative in New Prague.

Several factors, including special administrative requirements, make it difficult but not impossible to secure third-party reimbursements for health-related services.

We interviewed staff at the cooperative who said their third party payment program has been underway for more than five years and in fiscal year 1996 netted about $80,000. With parents' consent, the cooperative has not only billed the Department of Human Services but also commercial insurers and health maintenance organizations. Over time, staff estimated that about half of the parents have refused to allow them to file health insurance claims with the state or private carriers, mainly because of concerns about the possibility of premium increases, exceeding lifetime or annual reimbursement limits, and incurring copayments or deductibles. At issue is the principle that every child is entitled to a free, appropriate education. The cooperative has addressed this issue by assuming liability for insurance-related costs, if documented.

Another potential impediment to third party reimbursement is that services must be provided by licensed health care professionals. In the case of special education, the services are often provided by school district staff, many of whom are licensed instead as educators. Unless educators also happen to be licensed as health care professionals, as has been the case where school districts have already received payments, school districts cannot bill third parties.[17]

Currently, the Board of Teaching issues educational licenses for school social workers, school psychologists, and speech/language pathologists. None of these

14 Roberta A. Kreb and Cynthias R. Stevens, *Third Party Reimbursement: A Manual for Health Related Services Provided to Children and Youth with Handicapping Conditions* (St. Paul: Department of Education, February 1990).

15 Howard Abrahamson, Dean McWilliams, Cynthia Stevens, and Vernon Weckwerth, *IEP Health Related Services Study: Phase One* (St. Paul: Department of Education, September 1990).

16 See memos from Jeana Hamm, Department of Human Services, January 26 and November 14, 1996. Covered services and procedures to obtain reimbursement for IEP-related services are explained in the department's *Minnesota Health Care Programs (MHCP) Provider Manual* (St. Paul, October 1995), Ch. 24, Sec. I.

17 For example, see Department of Human Services, *MHCP Provider Manual*, 1995, Ch. 24 regarding covered services.

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require professional examinations although they do require some educational courses. On the other hand, physical and occupational therapists employed by school districts are licensed only as health care professionals. Because of such differences between educational and other licenses, the Commissioners of Health, Human Services, and Children, Families & Learning in 1996 recommended an in-depth study, reciprocity agreements among credentialing bodies, and other measures. In the meantime, *Minn. Laws* (1993) Ch. 224, Art. 12, Sec. 34, requires the Board of Teaching to develop new, results-oriented educational licenses.

Assuming that parents consent to billing and that services are provided by appropriately licensed personnel, the district itself must apply to potential third party payors and be accepted by them as a legitimate provider of health care services. Each payor may have its own requirements, payment schedules, forms, and billing procedures which the district must agree to follow. For example, the Department of Human Services requires a copy of the student's IEP, physicians' orders and service reviews every two months, one-to-one service provision, and evidence of medical appropriateness, necessity, and effectiveness.

EXPERIMENTAL PROGRAMS

Some districts have developed alternative special education systems, especially for students with learning disabilities and emotional/ behavioral disorders.

Recognizing various local difficulties and ideas for improving special education, the Legislature has taken several steps to encourage alternatives. In 1990, legislators approved an experimental program for St. Paul and additional districts.[18] In 1993, the law offered another program for up to 11 districts and one rural special education cooperative.[19] In 1995, lawmakers approved two additional programs, one for White Bear Lake and another for school districts selected by the Department of Children, Families & Learning.[20] In addition, the State Board of Education has waived certain of its rules at districts' request. The Minneapolis and St. Cloud school districts took this approach in 1993 and 1996 respectively.

Alternatives to the traditional model of special education have been sought nationally and locally for two main reasons. First, educators are concerned that separate funding systems, separate staff, separate administrations, and different rules hinder collaboration between regular and special education.[21] Second, educators question the accuracy, desirability, and practical value of the disability labels they must attach to special education students. The labels may be irrelevant for instructional purposes, harmful to students, and time-consuming at the expense of direct services.

Because of limited participation and the recent implementation of most of Minnesota's experimental special education programs, it is impossible to judge overall

18 Minn. Laws (1990), Ch. 562, Art. 3, Sec. 12, extended to additional districts in 1991. See *Minn. Stat.* §120.173.

19 Minn. Laws (1993), Ch. 224, Art. 3, Sec. 36.

20 Minn. Laws (1st Spec. Sess. 1995), Ch. 3, Art. 3, Secs. 11 and 18.

21 National Association of State Boards of Education, *Winners All: A Call for Inclusive Schools* (Alexandria, VA: 1993).

results. Except for the addition of students with mental impairments in Minneapolis, all of the following programs are targeted at students who have or are likely to develop learning disabilities or emotional/behavioral disorders.

St. Paul

Experimental programs generally make it easier for districts to provide special education services.

Since 1990, the St. Paul school district has provided "prevention" services in regular classrooms as an alternative to special education for low-performing students who educators think otherwise would eventually receive special education services. The focus of the program is to improve the math and reading skills of 1st through 8th graders without the formal referrals, assessment, and classification procedures that ordinarily qualify students for special education. Details of implementation have varied with students' age, school sites' approach to education, and educators' experience.

In general, the district uses site-specific criteria to select students into the program, such as teachers' recommendations, routine tests, report cards, information from parents, writing samples, and students' class ranking. As Figure 3.1 illustrates, the program features a streamlined referral process that, according to the district, has saved an average of 13 hours per special education teacher.

Students in the prevention program are not labeled with one disability or another. Their parents are simply notified that their child is eligible for specialized instruction services, which the parents may help to plan. The services to be provided to particular students are explained in a Personal Intervention Plan instead of an IEP. As part of the program, parents are asked to sign a participation agreement that encourages them to build a positive learning environment for the child at home.

Evaluations suggest that the program has been satisfactory to parents, teachers, and students and that the participating students have gained reading and math skills.[22] In addition, at most of the school sites, the rate of referrals to special education has been somewhat lower than the district average. In light of such data, the Department of Children, Families & Learning recently suggested that most districts could well take a similar approach.[23] Others that have already experimented with this approach on a smaller scale include the Nett Lake, Dover-Eyota, Rochester, and Fairmont districts. However, the latter two districts discontinued the experiment for administrative reasons, including the amount of evaluation data that the law requires.

Minneapolis

Since 1993, the Minneapolis school district has used its own, approved criteria for identifying children with learning disabilities and mental impairments. Specifically, the district stopped using intelligence tests to determine eligibility for

22 St. Paul School District, *Evaluation of Alternative Delivery of Specialized Instruction Services, 1995-96 School Year*, July 1996.

23 Memo from Wayne Erickson and Thomas Lombard, Department of Children, Families & Learning, to Office of the Legislative Auditor, August 23, 1996.

Figure 3.1: Activities Required of Special Education Teachers Making Referrals Compared with St. Paul Prevention Program

	Average Hours Needed
ALTERNATIVE PROGRAM	1
1. Complete assessment information needed for school's eligibility criteria	
2. Meet with regular education teacher(s) to determine learner's eligibility and needs	

	Average Hours Needed
SPECIAL EDUCATION	14
1. Review referral, review cumulative folder, consult with classroom teacher	
2. Attend child study meeting to determine needs and develop assessment plan	
3. Contact parents for home concerns	
4. Prepare and mail due process forms to parents	
5. Notify assessors of parent permission, establish time lines, schedule assessment summary report meeting	
6. Observe learner, complete assessment of learner	
7. Score, interpret, summarize assessment information	
8. Attend assessment summary report meeting	
9. Write assessment summary report	
10. Schedule individual education plan meeting with parents and classroom teacher	
11. Prepare and mail due process forms to parents	
12. Attend individual education plan planning meeting	
13. Write individual education plan	
14. Prepare and mail due process forms to parents	
15. Prepare special education file and data sheet	

Note: For purposes of illustration, just one special education teacher's procedures are listed. In practice, several others also would complete procedural activities for special education, such as psychologists, speech and language clinicians, social workers, occupational and physical therapists, and nurses.

Source: St. Paul School District, *1995-96 Evaluation of Alternative Delivery of Specialized Instructional Services*, Appendix G-H.

special education services for these two categories of disabilities except when requested by the parents or considered appropriate by school psychologists.[24] Instead, the Minneapolis program rests on a problem-solving model that emphasizes intervention prior to placing students in special education and assessments to identify students' educational needs as opposed to their particular category of disability.

Minneapolis' experimental program reflects the serious reservations that some educators and researchers have about (1) the validity of using intelligence tests to determine eligibility for special education and (2) potential test bias against racial and cultural groups. The district's proposal to the State Board of Education

24 See Minnesota Public Schools, *Special Education Experimental Program Proposal Appendices* (Minneapolis, November 8, 1993).

included research and professional opinions to the effect that intelligence tests are not necessary or helpful in developing individual educational plans.[25] Other concerns were that test administration is expensive and time consuming, especially for school psychologists. In addition, the district cast doubt on the possibility of reliably distinguishing between students' intellectual ability and achievement as Minnesota's criteria require to document learning disabilities.

The waiver will expire in January 1997 unless the district obtains approval to continue. By that time, an evaluation of the program is scheduled to be completed.

White Bear Lake

The 1995 Legislature authorized a pilot program specifically for the White Bear Lake school district to provide comprehensive early intervention services to children in regular education who show signs of emotional or behavioral disorders.[26] To be eligible, students must be in sixth or seventh grade at one of two middle schools and be at risk of being placed in special education.

The program is scheduled to operate through June 1997. An academic component includes computerized instruction in math and reading. A social component includes a University of Minnesota-developed curriculum that teaches students how to interact with others, deal with anger, and communicate without acting out. A parent component brings staff from the school district and the University of Minnesota to meet with parents regarding parenting skills. Finally, a mentoring component brings adults from the community to work with the students, and the school district attempts to bolster students' confidence by having them tutor young students and volunteer in the community.

The director of special education told us that staff and parents rate the program highly and that it has caused a reduction in special education referrals. An evaluation of the program by a professor from the University of Minnesota is scheduled for January 1997.

St. Cloud

In August 1995, the State Board of Education allowed special education reimbursement to the St. Cloud school district for providing early intervention services to at-risk students who exhibit challenging behavior in regular classrooms. In addition, the district can obtain special education reimbursement for support services to regular education teachers. This "prereferral intervention" program, which focuses on the K-6 population, has three goals: (1) to reduce the number of students ultimately found emotionally or behaviorally disordered; (2) to provide a coordi-

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25 For example, Jack M. Fletcher, "The Validity of Distinguishing Children with Language and Learning Disabilities According to Discrepancies with IQ: Introduction to the Special Series," *Journal of Learning Disabilities*, 25 (November 1992) : 546-548; and Linda S. Siegel, "An Evaluation of the Discrepancy Definition of Dyslexia," *Journal of Learning Disabilities*, 25 (December 1992): 618-629.

26 *Minn. Laws* (1995 1st Spec. Sess.), Ch. 3, Art. 3, Sec. 18.

nated, districtwide staff development program; and (3) to reduce the time and effort that special education staff spend on identification and assessment.

The program, implemented in January 1996, emphasizes teaching all students social skills, implementing specialized classroom behavior management strategies, and using "administrative interventions," when appropriate. Administrative interventions occur outside the regular classroom and involve teaching students the social skills that they did not display. For example, some administrative interventions teach students how to accept criticism, follow instructions, and ask permission of teachers.

The State Board required the district to annually collect data necessary to determine the extent to which the program has met its major goals and objectives. No results are available at this date, but staff told us that the program is working as anticipated.

Options Plus

Four school districts including Elk River, Mounds View, Osseo, and Atwater/Cosmos/Grove City are participating in an "options plus" pilot program. The 1995 Legislature created this program primarily as a means of training regular education teachers to accommodate students with learning disabilities.[27] Other goals of the program are to increase regular education's ability to educate students without removing them for separate instruction and to provide an efficient, cost-effective alternative to special education.

After 20 years of experience, policy makers across the nation are trying to reform special education.

The options plus program allows school staff to prepare "learner plans," which are simplified versions of the individual education plans otherwise required in special education. The four participating districts must report to the Department of Children, Families & Learning on the educational impact and cost-effectiveness of the program by February 1997. The department then has a year to evaluate the program but may present an interim report to the 1997 Legislature.

STATE AND NATIONAL PERSPECTIVE

Policymakers outside Minnesota also have sought alternative, less complicated methods to provide special education. Although concerned about the quality, price, and effectiveness of public education in general, special education has presented opportunities for reform because of widespread agreement that a major social goal has already been achieved--that is, to ensure that children with disabilities attend school. In the past, such children might have remained at home without instruction or lived in institutions.

27 *Minn. Laws* (1995 1st Spec. Sess.), Ch. 3, Art. 3, Sec. 11.

National Context

The U.S. Department of Education recently proposed amending the Individuals with Disabilities Education Act to place greater emphasis on improving student performance. According to the federal government, the educational achievement, postsecondary school attendance, and employment rate of students with disabilities are all less than satisfactory, especially for students with learning disabilities and emotional disorders.[28] Also, there is federal concern about the overrepresentation of minority groups in the population of special education students.

The price, quality, and results of special education are now greater concerns than access.

To address these concerns, the U. S. Department of Education proposed that Congress change the act in major ways. First, the department proposed that states in the future should receive funding based on the total number of children in each state, rather than the state's special education population, and that funding mechanisms should encourage school districts to provide more regular education services before using the special education system. Second, the department proposed to give more flexibility to states, making them more free of categorical definitions and rigid criteria. Third, the department proposed to encourage states to include most special education students in statewide and districtwide tests of educational achievement.

Congress adjourned in October 1996 without reauthorizing the Individuals with Disabilities Education Act. Therefore, discussions must start over in 1997. So far, most of the debate has revolved around three issues. First, there was much discussion about stopping services to special education students who are involved with guns or drugs at school when the behavior is not disability-related. Second, because of litigation costs, legislators debated limiting attorneys' fees under some circumstances. Third, the U. S. House of Representatives debated and adopted a new funding formula that would have been based on the total number of children in a state and the state's poverty rate.

State Financing of Special Education

In the past few years, state policy makers have focused their attention particularly on the relationship between policy objectives and the incentives that are built into funding formulas. According to the Center for Special Education Finance, about two-thirds of the states have recently tried or succeeded in changing the way that they finance special education.[29] Most have tried to contain rising costs by removing fiscal incentives for districts to identify students as disabled or place them in restrictive environments.

Although the details of special education financing systems vary widely, states essentially use one of the four approaches shown in Figure 3.2: flat grants, percent reimbursement, resource based, or pupil weights. We note that the appropriate-

28 U.S. Department of Education, *Individuals with Disabilities Education Act Amendments of 1995* (Washington, D.C., August 29, 1995).

29 Thomas B. Parrish and Jay G. Chambers, "Financing Special Education," *The Future of Children* (Spring 1996), 128.

Figure 3.2: How States Fund Special Education

Type of Funding Formula	Reformed Within Last 5 Years	Now Considering Major Reform	No Recent or Expected Changes
FLAT GRANT			
• Based on Special Education Enrollment	Alabama Colorado	North Carolina	Maryland West Virginia
• Based on Total District Enrollment	Massachusetts Montana North Dakota Pennsylvania South Dakota[1] Vermont		
PERCENT REIMBURSEMENT			
• Based on Actual Expenditures	Idaho Louisiana MINNESOTA	Connecticut Rhode Island Wyoming	
• Based on Allowable Costs		Maine Michigan Nebraska	Wisconsin
RESOURCE BASED			
• Based on Allowable Costs	Illinois		
• Based on Classroom Unit		California Delaware Ohio Tennessee	Nevada Virginia
• Based on Number of Special Education Staff		Missouri	Kansas Mississippi
PUPIL WEIGHTS			
• Based on Disabling Condition	Kentucky	Arizona Florida Georgia Indiana	Oklahoma South Carolina
• Based on Type of Placement	Texas Utah	Alaska Arkansas Iowa New Hampshire New York	
• Based on Special Education Enrollment	Oregon Washington		
• Based on Placement and Condition		New Jersey	Hawaii
• Based on Services Rendered		New Mexico	

Source: Center for Special Education Finance, Fall 1996.

[1]Effective January 1997.

ness of one formula versus another depends upon the problems and needs that characterize each state's special education system. For example, some states could do more to serve eligible children. Other states may be overusing specialized services because their funding formulas indirectly encourage school districts to send special education students to expensive, restrictive settings.

As shown, 11 states use a *flat grant* approach that generally appropriates a fixed amount of special education funding per student based on either total enrollment or special education enrollment. For example, five states appropriate funds based on the number of special education students that are identified by school districts. The federal government also uses this approach to allocate funds to states.

Flat grants are the easiest, least burdensome way for states to fund special education.

Allocating dollars based on total student enrollment, also called census based funding, is a relatively new variation of the flat grant approach. South Dakota, Massachusetts, Montana, North Dakota, Pennsylvania, and Vermont appropriate special education funds based simply on total district enrollment -- the more students, the more special education aid. Most of these states also have safety nets for districts that have special education students who cost significantly more than other special education students.

Advantages of the census-based approach are its administrative simplicity and predictable level of state funding. Also, the census-based approach neither discourages nor encourages districts to identify special education students or place them in expensive settings. On the other hand, opponents blocked implementation of census-based funding in Alabama. The courts said this approach would be "irrational and arbitrary" and in violation of the state constitution because districts with higher percentages of special education students could have received less per pupil aid than districts with lower percentages.

Ten states, including Minnesota, use a *percent reimbursement* approach where funding is based on a certain percentage of allowable or actual expenditures. This approach requires considerable paperwork by the state and school districts because only certain expenses are reimbursed at specified levels. For example, Wisconsin uses a weighted percentage formula for reimbursing districts' approved salary, fringe benefits, and transportation costs. As we explained in Chapter 1, Minnesota reimburses a percentage of the costs of special education for approved salaries, supplies, materials, and equipment, and contracts. However, critics point out that the more money that school districts spend, the more funding they receive through percent reimbursement formulas. Also, the administrative costs of such detailed funding systems can be high.

Ten other states use a *resource based* system in which funding is based on resources allocated to special education, such as teachers or classroom units. For instance, Illinois provides a fixed amount per special education staff member such as $8,000 per full-time professional worker (whether it is a teacher, social worker, or administrator). This approach may encourage districts to serve students who need specialized services but at the same time create financial incentives for districts to place students in more restrictive special education settings. And, like reimbursement-based funding, it requires complex record keeping.

The 19 remaining states use *pupil weights* where special education students generate a fixed multiple of the amount allocated for students in regular education. For example, Florida provides aid based on the number of special education students in each of 15 disability categories. The advantage of this approach is that districts receive more money to serve children with greater needs and less for others. But, like most of the other approaches above, this may give districts a financial incentive to serve students through special rather than regular education. Also, districts may be inclined to classify students as more disabled than they are.

Some other states give school districts more freedom to spend special education dollars.

Perhaps as important as the type of system that legislators choose to use in appropriating special education dollars is the degree of flexibility that they give school districts in spending the money. About half the states, like Minnesota, generally require that special education dollars be spent only in special education programs.[30] The remaining half of the states allow districts some latitude to spend money on students without formally assessing them for special education services. For example, school districts in Vermont can spend special education aid on remedial or compensatory education. In Massachusetts, special education funding is part of the state education allocation that all towns and municipalities receive, and school districts decide how money is spent. Besides recognizing local control, this approach can help to reduce paperwork and discourage school districts from unnecessarily placing students in special education.

Overall, our examination of special education funding policies suggested that Minnesota is more restrictive than some other states. Unless approved to use alternative methods, school districts here are generally reimbursed for expenditures on students who are formally eligible for services.[31] Also, despite significant changes by the 1995 Legislature, Minnesota's reimbursement-based funding formula contributes to school districts' paperwork burden and may not reduce special education spending over the long term.

SUMMARY

Throughout this and the previous chapter, policy makers' various efforts to encourage economy, efficiency, and experimentation with alternative methods of delivering special education are apparent. Besides recently changing Minnesota's special education funding formula, the Legislature has commissioned task forces, authorized pilot programs, amended laws, and required the Department of Children, Families & Learning to give more help to school districts. Most districts have also taken steps to contain costs and make the system run more smoothly.

Besides the steps that legislators have already taken, we identified several measures that could be of further help in efforts to contain costs and improve special education. These include following up on task force recommendations regarding

30 Thomas B. Parrish, "Special Education Finance: Past, Present and Future," *Journal of Education Finance*, 21 (Spring 1996) 454.

31 *Minn. Rules* 3525.1310, Sub part D specifies that funding is for instruction or related and support services to students with IEPs.

eligibility criteria and court-ordered placements, simplifying Minnesota's funding formula, giving hearing officers specific authority to sanction attorneys, continuing to encourage coordinated service delivery, eliminating barriers to third party reimbursement caused by licensing differences, amending Minnesota's open enrollment law, and extending more opportunities for school districts to test alternative methods of special education. Also, we think that legislators should continue to encourage the Department of Children, Families & Learning to provide technical information and support to school districts, particularly in the areas of "best practices," regulatory compliance, proper methods of student assessment, effective use of regular education as an alternative to special education, third party cost recovery systems, and teacher training. Finally, we think that Minnesota school administrators should continue to improve their management of special education, particularly in the areas of staffing, policy development, and dispute resolution.

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Minnesota Children
Minnesota Department of Children, Families & Learning

January 14, 1997

Mr. James R. Nobles
Legislative Auditor
Centennial Building
658 Cedar Street
St. Paul, MN 55155

Dear Mr. Nobles:

The purpose of this letter is to provide a formal response to the report on special education issued by your office.

First, in general we are very pleased with the report. It thoroughly and comprehensively covers the four topics requested by the legislature and we believe it will provide legislators with accurate information on which to continue their deliberations. Most specifically we are pleased that the report recognizes:

- That staff increases from 1988-95 are mainly paraprofesssional and support staff which reflects the state's commitment to inclusive services.
- That Minnesota's incidence rate of students with disabilities has been moderated by the adoption of state criteria and the current over-all rate is reasonable when compared to regional and national rates.
- That costs for special education, approximately twice the cost of educating students without disabilities, may be viewed as reasonable especially since the general education revenue is often not directly applied to special education programs. As you pointed out that is consistent with national findings.

Concerns that we have about the report are more general in nature and can be characterized as concerns over how the report will be perceived by the various persons who will read the report, including legislators.

The report does not provide a sufficient context for special education. Of course, the Legislature has the authority and responsibility to revise its policies but to do so in some logical fashion requires a common starting point, a common understanding of the rationale behind the policies currently driving special education. The lack of a philosophical base, a statement of why provide any special education, and most importantly a description of the human and fiscal implications of not providing any special education assumes the reader has a basic understanding of these topics. While it is recognized that the report is intended for the Legislature in its policy deliberations, due to biennial turnover in committee membership, it cannot be assumed that each committee member has the same understanding of how and why Minnesota has adopted its current policies.

The report includes the costs of providing general education as a part of the total cost of providing services to students with disabilities. While this appears to be accurate, as viewed from the perspective of a single student, we believe that a more accurate perspective could be gained by including only the excess costs for providing special education on a statewide basis. State funding for special education has historically been provided through an excess cost

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formula, that is cost in excess of providing education for a student who does not have a disability. If fewer students were to be served in special education, the costs for the general education of the students no longer served in special education would still be there. However, the inclusion of the general education costs as a part of special education costs exacerbates the common but erroneous perception that the general revenue provided to schools is not intended as a resource for students with disabilities.

A specific concern relates to the sections of the report that address the category of students with emotional - behavioral disorders (E/BD). The report states that the criteria used in Minnesota schools for students categorized as E/BD go beyond the federal definition. There is significant confusion and professional disagreement over this point and we agree that clarification is necessary. Improvements in E/BD entrance criteria as recommended by Task Force II may have resolved some of this problem and, as you noted, consideration of those recommendations awaits legislative action.

We do not believe that Minnesota is over-identifying students with E/BD, in fact research estimates that the incidence rate of persons with SED in the general population is 3 to 5% while we are now serving 1.8% of the population. Minnesota's criteria have been approved by the Federal Government and include students with oppositional defiant disorders and conduct disorders. However, research by mental health experts indicates to us that it is not possible to differentiate between the social maladjustment and the emotionally disturbed categories. The report further indicates that we do not know how many of the students served meet criteria based on behavioral issues and that is true. To gain such data the state would have to require medical or psychiatric assessments. Another part of the report identified the fact that one complaint of local administrators was the heavy requirements for assessment related to eligibility. The report indicated that they believe that funds could be more efficiently used for programming. If the state were to require such medical or psychiatric assessments, we believe that costs would rise significantly.

Again, thank you for a well written and well researched report. Please feel free to call if you have questions.

Sincerely

Robert Wedl
Commissioner

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